QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT MCKEON

Illum it-Tnejn 4 ta` Gunju 2018

Kawza Nru. 1
Rikors Nru. 9/17 JZM

Louis Apap Bologna K.I. Nru 0701544M

kontra

Avukat Generali

u

Karl Flores sew f`ismu proprju u bhala prokuratur ta` l-assenti Ivan Bagnasco u Vania Bagnasco ulied Sandra Flores

Il-Qorti :

I. <u>Preliminari</u>

Rat ir-rikors prezentat fit-<u>22 ta` Frar 2017</u> li jaqra hekk :–

1. Premess illi bi skrittura datata 22 ta` Jannar 1922, kopja ta` liema hija hawn esebita bhala Dokument "A" l-ahwa Gustaf u William Gollcher krew il-fond ossia il-`bottega sita in Strada Reale nri 295 e 296, Valletta, per quatro anni di fermo` lil Vincenza Grech ghan-nom tad-Ditta Mc Bailey b`kera ta` `cento lire sterline` fis-sena;

2. U Billi minkejja li l-kirja kienet biss ghall-erba` snin, b`effett tal-ligi baqghet tipperdura u sussegwentement, bi ftehim ratifikat mill-Bord li Jirregola l-Kera fis-sena 1964, il-kirja giet mibdula ghal Lm150 fis-sena;

3. U Billi r-rikorrenti Louis Apap Bologna kien ircieva nofs indiviz ta` l-istess fond bhala parti mis-sehem lilhu dovut tal-wirt ta` Chev. Fredrik Karl Gollcher b`att ta` Divizzjoni pubblikat fit-30 t`April 1980 in atti Nutar Paul Pullicino, kopja ta` liema hija hawn esebita u mmarkata bhala Dokument "B;"

4. U Billi sussegwentement b`att ta` Divizzjoni pubblikat fil-11 ta` Settembru 1980 fl-atti tan-Nutar Paul Pullicino, kopja ta` liema hija hawn annessa bhala Dokument "C". L-istess fond kien gie diviz u r-rikorrenti Louis Apap Bologna kien inghata bi propjeta assoluta bhala nofs spettanti lilhu l-parti tal-fond li kellha l-entrata mill-bieb numru 296, liema fond huwa ahjar deskritt fl-istess Att hawn anness;

5. U Billi jirrizulta li b`zewg kuntratti pubblici fl-atti tan-Nutar Joseph Henry Saydon datati 18 ta` Frar 1981 u 9 ta` Dicembru 1981 l-intimat Karl Flores [6049M] akkwista l-avjament ta`negozju maghruf bhala "McBailey" Triq ir-Repubblika, Valletta u igib innumru mitejn hamsa u disghajn, mitejna sitta u disghajn u dan l-avvjament jikkomprendi id-dritt tal-inkwilinat…; liema dokumenti huma hawn annessi u mmarkati Dokument "D" u "Di" rispettivament;

6. U Billi r-rikorrenti kien oppona ghal dak it-trasferiment fis-sena 1986 b`kawza quddiem il-Bord li Jirregola l-Kera fl-ismijiet "Dominic Cutajar et noe et vs Marcus Flores et" liema kawza giet deciza biss fil-15 ta` Marzu 2001 favur l-inkwilin kopja tas-sentenza hija hawna annessa u mmarkata bhala Dokument "E";

7. U Billi ghalhekk il-fond baqgha mikri lill-inkwilini b`kirja ta` Lm150 fis-sena kif stabbilit fis-sena 1964;

8. U Billi fis-sena 2009 l-Parlament Malti in rikonoxximent tal-pregudizzju li l-ligijiet tal-kera kienu qeghdin joholqu lil sidien ta` propjeta mikrija lil terzi ghadda ligi l-att numru X tal-2009 ghat-tenur ta` liema huwa ddispona li l-kirjiet ta` fondi kummercjali kellhom jizdiedu fis-sens li :

1531D. (1) Il-kera ta` fond kummercjali, fin-nuqqas ta` ftehim mod iehor milhuq wara l-1 ta` Jannar, 2010 jew ta` ftehim bil-miktub li jkun sar qabel l-1 ta` Gunju, 1995 dwar kirja li tkun ghadha fil-perjodu originali taghha fl-1 ta` Jannar, 2010, ghandu fl-1 ta` Jannar, 2010 jigi mizjud b`rata fissa ta` hmistax fil-mija fuq il-kera attwali u jibqa` jigi mizjud kull sena kull l-ewwel ta` Jannar bi hmistax fil-mija fuq l-ahhar kera bejn l-1 ta` Jannar, 2010 u l-31 ta` Dicembru, 2013.

(2) Il-kera fl-1 ta` Gunju, 2013 ghandu jigi stabbilit bi qbil bejn il-partijiet. Fin-nuqqas ta` qbil, ghandu jittiehed bhala gwida ghall-kera l-Indici tal-Valur Kummercjali tal-Proprjetà kif jista jigi stabbilit b`regolamenti maghmulin mill-Ministru responsabbli ghall-akkomodazzjoni u fin-nuqqas ta` regolamenti, il-kera ghandu mill-1 ta` Jannar, 2014 joghla b`hamsa fil-mija fis-sena sad-dhul fis-sehh ta` l-imsemmija regolamenti.

9. U Billi nonostante dan sal-lum ma giex ppublikat l-Indici tal-Valur Kummercjali tal-Proprjetà u ghalhekk fin-nuqqas ta` qbil mod iehor, il-kera zdiedet skond il-ligi, li fil-present ifisser li minn sena ghal sena il-kera tizdied b`hamsa fil-mija (5%) fis-sena;

10. U Billi fil-fatt b`effett ta` l-istess ligi il-kera illum giet awmentat ghal €707.44 ghal fond intier u cioe ghal propjeta numri 295/296 – u dana kif dikjarat mill-inkwilin fic-cedola ta` depozitu fil-Qorti tal-Magistrati numru 2490/16 kopja ta` liema hija hawn annessa u mmarkata bhala Dokument "F"

*11. U Billi dik il-kera` hija wahda irrizorja meta komparat mal-kera li l-fond intier kien jikseb fis-suq billi il-kirja imhalsa hija iktar minn mitt darba inqas mill-kera li kien inghata f`suq liberu u dana kif konfermat mir-rapport tal-Perit Godwin Abela hawn anness u esebit bhala Dokument "G" li kkonferma li l-kirja ghal fond intier u cioe ghal propjeta numri 295/296 huwa ta` **€103,500** fis-sena;*

12. U Billi l-isproporzjon huwa tant kbir li bil-mekkanzimku previst mil-ligi l-esponenti qatt ma ser jinghata kirja ekwa ghaz-zmien li l-fond ser jibqa` f`idejn l-inkwilin;

13. U Billi b`dan il-mod ir-rikorrent gie u qieghed jigi imcahhad mit-tgawdija tal-proprjeta tieghu minghajr ma qieghed jinghata kumpens xieraq ghat-tehid tal-pussess tal-istess fond;

14. U Billi l-privazjoni tal-propjeta tar-rikorrenti hija lezjoni tad-dritt ta` propjeta kif protetta mill-Kostituzzjoni u l-Konvenzjoni Ewropea.

15. U Billi ghalhekk l-esponenti ihoss li fir-rigward tieghu qed jigi miksur l-Artikolu 37 tal-Kostituzzjoni ta` Malta kif ukoll l-ewwel Artikolu tal-ewwel Protokol tal-Konvenzjoni Ewropea u dana billi qieghed jigi privat minghajr ma jinghata kumpens gust mit-tgawdija tal-propjeta tieghu u cioe Valletta;

Ghaldaqstant l-esponent jitlob bir-rispett lil dina l-Onorabbli Qorti joghgobha salv kull dikjarazzjoni xierqa u opportuna ohra:

1. Tiddikjara li qeghdin jigu vjolati d-drittijiet fondamentali tar-rikorrenti kif sanciti mill-Artikoli 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu ta` l-Ewwel Protokol tal-Konvenzjoni Ewropea (l-ewwel skeda tal-Kap. 319) ghar-ragunijiet fuq esposti u dawk li ser jirrizultaw waqt it-trattazzjoni ta` dan ir-rikors;

2. Konsegwentement taghtih dawk ir-rimedji kollha li jidhrilha xierqa u opportuni nkluz li jinghata l-pussess effettiv tal-fond numru 296, Triq ir-Repubblika Valletta u kumpens xieraq ghall-okkupazzjoni tal-fond bi vjolazzjoni tad-drittijiet tar-rikorrenti.

Bl-ispejjez.

Rat l-elenku ta` dokumenti.

Rat ir-risposta li pprezenta l-intimat Avukat Generali fis-7 ta` Marzu 2017 li taqra hekk :-

1. *Illi fl-ewwel lok ir-rikorrent ghandu jindika b`liema ligi l-awturi tieghu gew allegatament imgieghla li jgeddu l-kirja wara li din ghalqet fl-*

*1926. Dan qed jintalab ghax l-**Ordinanza XXI** (li ghall-bidu gie nomenklat bhala **Kap 109 tal-Ligijiet ta` Malta** u mbaghad wara l-ahhar revizjoni tal-edizzjoni tal-ligijiet sar kif nafuh illum il-**Kap 69 tal-Ligijiet ta` Malta**) dahal fis-sehh fl-1931. Ghalhekk jekk l-awturi tar-rikorrenti komplew il-kirja wara l-1926 u qaghdu ghad-dispozizzjonijiet tal-**Kap 69 tal-Ligijiet ta` Malta** dan ghamluh mhux ghaliex gew imgieghla bil-ligi izda ghax hekk riedu skont ir-rieda taghhom;*

2. *Illi dejjem bla hsara ghal dak fuq imsemmi, l-**artikolu 37 tal-Kostituzzjoni ta` Malta** indikat mir-rikorrent mhuwiex applikabbli ghaliex il-kirja ta` Flores hija mharsa bil-**Kap 69 tal-Ligijiet ta` Malta,** li bhala ligi ezistenti qabel l-1962 tinsab protetta bl-**artikolu 47(9) tal-Kostituzzjoni.** Dan l-artikolu jipprovdi testwalment li, "Ebda haga fl-artikolu 37 ta` din il-Kostituzzjoni **ma ghandha tolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu, 1962** jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data (jew xi ligi li, minn zmien ghal zmien, tkun emendata jew sostitwita bil-mod deskritt f`dan is-subartikolu)...";*

3. *Illi f`kull kaz l-invokazzjoni tal-**artikolu 37 tal-Kostituzzjoni** huwa ghal kollox improponibbli, ghaliex dan l-artikolu jghodd biss meta jkun hemm tehid obbligatorju tal-proprjetà. Tassew sabiex wiehed jista` jitkellem dwar tehid imgieghel jew obbligatorju, persuna trid tigi mnezza` minn kull dritt li ghandha fuq dik il-proprjetà bhal meta jkun hemm ordni ta` esproprijazzjoni ta` xiri dirett. Però dan mhuwiex il-kaz hawnhekk, ghaliex bl-applikazzjoni tal-ligi r-rikorrent ma tilifx ghalkollox il-jeddijiet kollha fuq il-gid inkwistjoni. Kemm hu hekk ir-rikorrenti mistenni li jiehu lura l-fond fl-2028 skont l-**artikolu 1531I tal-Kap 16 tal-Ligijiet**. Jigi b`hekk li l-ilment tar-rikorrent mhuwiex milqut fil-parametri tal-**artikolu 37 tal-Kostituzzjoni ta` Malta** u konsegwentement ghandu jigi mwarrab;*

4. *Illi minghajr hsara ghall-premess, safejn ir-rikorrent qed jattakka l-kirja mil-lenti tal-**ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea**, l-esponent iwiegeb li skont il-proviso ta` dan l-artikolu protokollari l-Istat ghandu kull jedd li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu ta` proprjetà skont l-interess generali. F`dan is-sens huwa maghruf fil-gurisprudenza li l-Istat igawdi minn diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u sabiex jistabilixxi liema huma dawk il-mizuri mehtiega ghall-harsien tal-interess generali;*

5. *Illi f`dan il-kaz l-indhil tal-Istat fl-uzu tal-proprjetà mikrija mir-rikorrent taqa` fl-ambitu tal-proviso tal-**ewwel artikolu tal-ewwel***

protokoll tal-Konvenzjoni Ewropea *peress li l-mizura censurata mir-rikorrent hija wahda legali ghaliex it-tigdid awtomatiku tal-lokazzjoni u l-kontroll tal-valur tal-kera ghall-skopijiet kummercjali tohrog mil-ligi stess;*

6. *Illi l-iskop ta` din il-ligi, kif konfermata wara kollox minn gurisprudenza stabbilita, ghandha ghan legittimu u hija fl-interess pubbliku ghaliex il-protezzjoni ta` fondi kummercjali barra li hija mahsuba biex tipprezerva l-vijabbilità ekonomika ta` intraprizi kummercjali, din tipprotegi l-impjieg tal-haddiema f`dawn l-intraprizi, tivvantaggja lill-konsumatur u tipprovdi stabbilità fis-servizz pubbliku provdut minn dawn l-azjendi;*

7. *Illi subordinatament u bla hsara ghal dak fuq imsemmi, dwar l-ilment marbut mal-ammont tal-kera u l-kundizzjonijiet tal-kirja, jissokta jinghad li l-kwantum tal-kera li kellu jithallas ghall-kiri ta` dan il-fond u l-kundizzjonijiet l-ohra lokatizji gew imposti mill-awtur tar-rikorrenti stess bi qbil mal-inkwilini minghajr l-intervent tal-Istat. Meta l-awtur tar-rikorrent iffirma l-kuntratt tal-lokazzjoni u ffissa l-kera huwa kien jaf b`kemm kien ha jkun il-valur tal-kera wara l-gheluq originali taghha. Ghalhekk ir-rikorrent ma jistax jilmenta fuq il-valur baxx tal-kirja. Ma kienx l-Istat li ddetta l-ammont ta` kemm kellha tkun il-kera. Multo magis imbaghad ma kien hemm xejn fil-ligi li kien izomm lill-awtur tar-rikorrent li jistabbilixxi awmenti perijodici tal-kera;*

8. *Illi dejjem fuq l-ilment marbut mal-isproporzjon fil-kera, jizdied jinghad li bil-migja tal-**artikolu 1531D tal-Kap 16 tal-Ligijiet ta` Malta** l-kera dovuta wara l-1 ta` Jannar, 2014, qed tizdied bil-hamsa fil-mija kull sena, li certament mhijiex zieda negligibbli;*

9. *Illi maghdud ma` dan, meta wiehed jigi biex ikejjel il-mizien tal-proporzjonalità wiehed irid iqis ukoll li l-protezzjoni tal-kera skont l-**artikolu 1531I tal-Kap 16 tal-Ligijiet** mhijiex ghal dejjem imma hija mahsuba li tintemm fi zmien tnax- il sena ohra, jigifieri fl-2028, li mhuwiex daqstant il-boghod. Barra minn dan, il-manutensjoni ordinarja li tolqot il-post mikri tmiss biss lill-okkupant u mhux lis-sid;*

10. *Illi ghalhekk meta wiehed jizen dan kollu, il-konkluzjoni hija li anke dan il-parti tal-ilment tar-rikorrent dwar in-nuqqas ta` proporzjonalità mhuwiex gustifikat ghaliex ma hemm l-ebda ksur tal-**ewwel artikolu tal-ewwel protokoll tal-Konvenzjoni Ewropea** u ghalhekk kull talba marbuta ma` dan l-artikolu mhix misthoqqha;*

Ghaldaqstant fid-dawl tas-suespost l-esponent umilment jitlob lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrent bl-ispejjez kontra tieghu;

Rat ir-risposta li pprezenta l-intimat Karl Flores pro et noe fl-14 ta` Marzu 2017 li taqra hekk :-

1. Illi preliminarjament l-attur irid igib prova tat-titolu tieghu.

2. Illi fit-tieni lok, a tenur tad-dispozizzjijiet tal-Art 46 (2) tal-Kostituzzjoni u l-Art 4 (2) tal-Kap 319, il-Qorti ghandha tiddeklina milli tezercita d-diskrezzjoni taghha u dan stante illi r-rikorrenti ma ezawrix ir-rimedji kollha lilu permissibbli skond il-ligi.

3. Illi fit-tielet lok u minghajr pregudizzju ghall-premess, kwantu ghal dak li jirrigwarda l-ilment tar-rikorrenti kif ibbazat fuq l-Artikolu 37 tal-Kostituzzjoni ta` Malta, tali talba ma tistghax tigi milqugha u dan à tenur ta` dak li hemm dispost fl-Artikolu 47.9 tal-istess Kostituzzjoni u dan billi l-Artikolu 37 tal-Kostituzzjoni ma jistghax jolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data.

4. Konsegwentement l-Artikolu 37 tal-Kostituzzjoni ma jistghax jigi invokat fil-kaz tal-kirja de quo stante li l-kirja hija wahda protetta taht id-dispozizzjonijiet tal-Kapitolu 69 tal-Ligijiet ta` Malta.

5. Illi fir-raba` lok in kwantu ghal dak li jirrigwarda l-ilment kif ibbazat fuq l-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropeja, jinghad illi stante li l-kirja tirrizali ghall-perjodu ta` qabel ma Malta ffirmat u ratifikat l-Konvenzjoni, u stante li l-istess kirja saret b`rizultat tal-ligijiet li kienu veljanti qabel ma Malta ffirmat u rratifikat l-istess Konvenzjoni u qabel ma accettat id-dritt tal-petizzjoni individwali, m`huwiex permissibbli li din l-Onorabbli Qorti tezamina l-ilment rationae temporis u rationae materiae.

6. Illi fil-hames lok u minghajr pregudizzju ghas-suespost, il-kera prezenti hija kera li giet awmentata in segwitu ghall-ftehim li kien sehh bejn is-sidien u l-inkwilin ta` dak iz-zmien fl-1964 li mil-informazzjoni li ghandu l-esponent, liema ftehim gie konfermat sussegwentement permezz ta` sentenza

tal-Bord li Jirregola l-Kera fl-ismijiet `Chevalier Fredrick Karl Gollcher et vs Farmacista Arthur Mizzi u Wilfred Flores ghad-ditta H. Mc Bailey & Co." Deciza fil-21 ta` Lulju 1964 (Rikors 284/64).

7. Illi l-esponenti qieghdin igawdu il-proprjetà b`titolu ta` lokazzjoni u l-ammont ta` kera huwa rizultat ta` ftehim li gie milhuq bejn il-partijiet wara li gie promultat il-Kap 69. Il-kirja giet sussegwentement accettata mis-sidien tal-istess proprjetà minn zmien ghal zmien hlief ghar-rikorrenti.

8. F`dan il-ftehim is-sidien setghu innegozjaw mekkanismu ta` revizjoni tal-kera u jekk ma ghamlux dan imputet sibi u ma jistghux issa jinvokaw lezjoni ta` drittijiet fondamentali (ara `Leslie Grech pro et noe et vs Nicolo Isouard Bank Club et`, Rik 11/2010 dec 26/06/2015) u ghalhekk stante li l-esponenti qieghed igawdi l-proprjetà in segwitu ghall-ftehim, ma jistghax jinghad mir-rikorrenti bhala s-successur fit-titolu tas-sidien antiki li kien hemm xi lezjoni li jahti ghaliha l-esponenti.

9. Fis-sitt lok l-esponenti qieghdin igawdu d-drittijiet taghhom kif permessi skond il-ligi. Il-mizuri rigward il-protezzjoni ta` kirjiet kummercjali huwa metodu skond il-ligi ta` kontroll ta` uzu ta` proprjetà u huwa l-interess pubbliku li l-Istat, li ghandu margini ta` apprezzament, ikollu kull dritt li jikkontrolla l-uzu tal-proprjetà. Tenut kont tan-numru ta` kirjiet ta` natura kummercjali li huma protetti skond il-Kapitolu 69 (kirjiet ta` qabel l-1995) u il-Gvern ghandu dritt jikkontrolla l-uzu tal-istess proprjetà u anke fl-interess tas-socjetà biex ma jkunx hemm impatt jew krizi fuq il-kummerc tal-hwienet, partikularment il-hwienet fil-Belt Valletta.

10. Di fatti l-Gvern, konxju ta` dan kollu implimenta mizuri gradwali li permezz taghhhom, apparti li holoq mekkanizmu ta` awment sostanzjali fil-kera, implimenta cut off date li permezz tieghu ta` zmien ragonevoli biex il-kirja tintemm (in mankanza ta` ftehim gdid li jista jigi milhuq bejn is-sidien u l-inkwilini).

11. Illi u f`kull kaz, tkun xi tkun l-eventwali decizjoni ta` din l-Onorabbli Qorti, l-esponenti m`ghandhomx jigu zgumbrati mil-fond de quo u lanqas ma ghandhom jigu pregudikati finanzjarjament billi huma ma kissru ebda ligi izda semplicement avallaw ruhhom minn ligi li ghadha fis-sehh. Il-hanut huwa fond importanti ghall-ghixien tal-esponenti u l-bilanc tal-hardship ghandu jikkomprendi wkoll ezami shih li jikkomprendi l-assi tar-rikorrenti u mhux biss tal-propjetà mertu tal-kawza mehud in isolament.

12. Konsegwentement it-talbiet tar-rikorrenti ghandhom jigu michuda bl-ispejjez.

Semghet ix-xhieda u rat il-provi l-ohra li tressqu fil-kors tal-kawza, inkluz ir-relazzjoni tal-espert tekniku Perit Mario Cassar li kien appuntat sabiex jirrelata dwar il-valur attwali fis-suq tal-fond *de quo* kif ukoll dwar il-valur lokatizju tal-istess fond mill-1986 sal-lum.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat in-noti ta` osservazzjonijiet tal-partijiet.

Rat l-atti l-ohra tal-kawza.

II. <u>Provi</u>

1. <u>Xhieda</u>

<u>Ir-rikorrent</u> xehed li huwa s-sid tal-fond 296, Triq ir-Repubblika, Valletta. Dan wasal ghandu b`wirt minghand iz-ziju tieghu Frederick Gollcher. Dan il-wirt kien regolat b`testment fl-atti tan-Nutar Dr Paul Pullicino tat-30 ta` April 1980. Dan kellu nofs indiviz tal-fond 295/296, Triq ir-Repubblika, Valletta. Wara l-mewt taz-ziju tieghu, huwa wasal ghal kuntratt ta` divizjoni mas-sidien l-ohra ossija l-Gollcher Foundation li kellha r-rimanenti nofs indiviz. Huwa messu l-fond 296, Triq ir-Repubblika, Valletta, skont kuntratt tal-11 ta` Settembru 1980 fl-atti tan-Nutar Dottor Paul Pullicino.

Kompla jixhed bi skrittura tat-22 ta` Jannar 1922, l-ahwa Gustaf u William Gollcher krew il-fond 295/296, Triq ir-Repubblika, Valletta, lil Vincenza Grech ghan-nom tad-ditta Mcbailey b`kera ta` *cento sterline* fis-sena. Il-kirja kienet biss ghal erba` snin izda b` effett tal-ligi l-kirja baqgha tipperdura, u wara bi ftehim ratifikat mill-Bord li Jirregola l-Kera fl-1964, il-kera saret ta` Lm 150 fis-sena.

Stqarr illi l-kera mhijiex wahda xierqa u ragonevoli peress li din tammonta ghal EUR 0.95c kuljum ghall-post kollu, meta l-post jinsab fil-qabda tal-Belt Valletta f` centru kummercjali importanti u centrali fis-suq.

Kompla stqarr illi d-dritt tieghu ghal kera gusta kien qed jigi michud ghaliex l-Att X tal-2009 ma kienx qed jaghtih dritt ragonevoli ghat-tgawdija tal-proprjeta` tieghu u kien qed jinghata zvantagg sproporzjonat lill-inkwilini. Bl-Att X tal-2009, il-kera vigenti kellha titla` bi 15% ghal tliet snin konsekuttivi. Wara dawn it-tlett snin, il-Gvern kellu jippubblika indici aggornat biex il-kirjiet kummercjali jitilghu ghal-livell tas-suq u fin-nuqqas, il-kirjiet kellhom jitilghu b`5% kull sena. Il-Gvern baqa` qatt ma ppubblika dan l-indici aggornat.

Xehed li huwa nkariga lill-Perit Godwin Abela sabiex jaghmel rapport bi stima ta` kera aggornata skont il-kriterji ta` llum. Fir-rapport, il-Perit Abela stima l-kera tal-fond intier llum fl-ammont ta` EUR 103,500 fis-sena, ossija EUR 283.00 kuljum. Skont il-kera kif qed tigi kkalkolata bl-Att X tal-2009, din hija 0.68% tal-kera stmata mill-Perit Abela, peress li l-kera tal-post hija llum ta` EUR 1.93 kuljum.

Spjega li skont l-Att, il-kera prezenti ta` EUR 707.40 biz-zidiet ta` 5% kull sena mil-lum sas-sena 2028 ser titla` ghal EUR 1210.10 fis-sena ghall-post kollu b` dana li l-kirja ta` kuljum ser tigi EUR 3.31.

Kompla jghid illi l-hanut de quo ghadu ghand l-istess familja bhala inkwilini u huwa m`ghandux possibilita` li jgib kera xierqa tieghu. L-inkwilin talab il-hlas ta` EUR 1 miljun lil terzi biex jirrilaxxja l-pussess tal-hanut.

Fil-**kontroezami**, xehed illi l-post kien gie denunzjat izda ftakarx il-valur li kien indikat fid-denunzja. L-amministraturi James Gollcher u Wilfred Attard ghamlu d-denunzja ghan-nom ta` l-eredi. Ghad-divizjoni kien inkarikat il-Perit Sansone li stima l-post fl-ammont ta` Lm 3,619. Ma ftakarx jekk kienx hemm ekwiparazzjoni. Meta wiret in-nofs indiviz, kien jaf li l-post kien mikri.

Spjega li ghall-bidu huwa kien jircievi kera izda mbaghad beda jirrifjuta l-kera. L-istess ghamlet il-Gollcher Foundation. L-inkwilin beda jiddeposita l-kera l-Qorti. Huwa pprezenta kawzi fil-Bord li Jirregola l-Kera izda kienu decizi kontra tieghu. Ippreciza li ma ghamel ebda kawza biex jitlob awment fil-kera.

Ipprova jasal ghal ftehim mal-inkwilin.

Cahad li l-inkwilin ghamel diversi offerti matul iz-zminijiet u li huwa baqa` ma tax risposta.

Cahad li l-inkwilin offra li jhallas iktar kera. Kien hemm okkazjoni fejn l-inkwilin qallu li kien hemm xi hadd interessat jikri l-post u kien ser ikun hemm awment fil-kera. Huwa spicca qata` qalbu.

Xehed illi Malcolm Lowell kien mar ikellem lill-inkwilin u dan talbu EUR 1 miljun biex jerhi l-pussess tal-fond.

Cahad li huwa persuna difficli biex tasal fi ftehim. It-tort ghan-nuqqas ta` ftehim kien kollu ta` l-inkwilin. L-inkwilin qatt ma semmielu somom ta` flus.

Karl Flores xehed illi l-post kien inkera l-ewwel darba fil-15 ta` Ottubru 1896 lil certu Pietro Paolo Grech. Meta dan miet, il-kirja ghaddiet ghand martu Vincenza Grech nee` Busuttil. Huwa ma jafx kemm kienet il-kera originali izda minn dokument datat 22 ta` Jannar 1922 jidher li s-sidien ta` dak iz-zmien Gustav u William ahwa Gollcher kienu rrikonoxxew lil Vincenza armla Grech bhala l-inkwilina izda l-kera zdiedet ghal Lm 100 fis-sena.

Kompla jixhed illi Vincenza Grech kellha tliet ulied : Alfredo, Adelina mart Renzo Flores, u Maria Imperia mart Arthur Grech. Alfredo miet guvni ; sehmu ghadda b`wirt ghand ommu u hutu l-bniet. Mal-mewt ta` Adelina, il-wirt taghha ghadda fuq uliedha Joseph, Mary, Wilfred, Lydia u Iris. Joseph u Iris mietu fl-1974 u s-sehem taghhom ghadda fuq missieru u hutu Lydia u Mary. Meta miet il-missier f`Jannar 1981, is-sehem tieghu ghadda b`wirt ghand it-tfal ta` ohtu Sandra Bagnasco, u hutu Jan u Marcus Flores. Spjega li Jan u Marcus Flores tawh sehemhom, waqt li akkwista wkoll is-sehem taz-zijiet tieghu Lydia u Mary fit-18 ta` Frar 1981.

Stqarr illi akkwista s-sehem ta` Maria Imperia Mizzi nee` Grech minghand uliedha b`kuntratt fl-atti tan-Nutar Joseph Henry Saydon tad-9 ta` Dicembru 1981. Sakemm miet missieru s-sidien kienu jaccettaw l-kera regolarment. Wara l-1981, hutu t-tfal ta` Sandra saru l-unici inkwilini.

Kompla stqarr illi huwa mar diversi drabi biex ihallas il-kera. Gieli mar ghand ir-rikorrent fid-dar tieghu Windsor Terrace, Sliema. Kien hemm okkazjoni fejn anke offrielu awment fil-kera. Talab lir-rikorrent biex ighidlu kemm kien qed jippretendi. Ir-rikorrent ried ikun jaf kemm hu kien lerst ihallas. Il-kwistjoni waqfet hemm ghaliex hadd minnhom ma hareg b`figuri. In segwitu beda jiddepozita l-kera fil-qorti.

Qal illi r-rikorrent kien ghamillu kawza ta` zgumbrament izda din kienet deciza kontra r-rikorrent. Talab lir-rikorrent f`erba` okkazjonijiet differenti sabiex jaslu fi ftehim dwar awment tal-kera. Ghal okkazjoni minnhom kienet prezenti bintu Raina.

Sostna li l-kera hija baxxa tort tar-rikorrent ghaliex qatt ma qallu kemm kien jippretendi.

Ikkonferma li Malcolm Lowell kien infurmah li kien interessat fil-hanut. Sa qallu li kien lest ihallas lilu biex jivvaka l-post. Sa kien inklinat li jidhol fi shab mieghu. Huwa qal lil Lowell min kien sid. Eventwalment ma hax lil Lowell bis-serjeta` u *to call his bluff* spara somma u talbu EUR 1 miljun biex jitlaq il-post. L-iehor wiegbu li l-figura ma kenitx problema izda baqa` ma sar ebda ftehim.

Xehed illi huwa qatt ma ghamel *management agreements*. Il-hanut huwa fond importanti ghall-familja tieghu. Gol-hanut, bintu u zewgha huma impjegati *full time* flimkien ma` tlett impjegati ohra.

Raina Borg xehdet illi hija tigi bint Karl Flores. Tahdem ma` missierha fil-hanut in kwistjoni. Ilha tahdem hemm ghal zmien twil minn mindu kellha sittax-il sena. Kienet waqfet ghal ftit zmien biex trabbi lil bintha ; imbaghad rega` bdiet tahdem hemm. Kienet prezenti ghal okkazjoni fejn missierha offra l-kera lis-sid izda dan ma kienx accettaha.

Taf illi Malcolm Lowell kien kellem lil missierha. Kellem anke lilha. Kienet prezenti waqt laqgha fejn Lowell wera x-xewqa tieghu li jiehu l-hanut in kwistjoni. Ikkonfermat li missierha kien dejjem jghidlu li huwa mhuwiex is-sid tal-post. Lowell wiegeb li ma kellux problemi mas-sid. Waqt laqgha ohra Lowell kien qal li l-familja tieghu ma accettatx li jsir *partnership* ma` missierha bil-kunsens tas-sid tal-post. Ghalhekk offra EUR 1.5 miljun sabiex jiehu l-pussess. Missierha qal li kien ser jahsibha izda baqa` ma sar xejn.

Qalet illi fil-hanut jahdmu hi, zewgha u erba` impjegati ohra. L-ghejxien taghha jiddependi mill-hanut. Fil-post jinbieghu hwejjeg u accessorji tan-nisa.

Fil-**kontroezami** xehdet illi ma kinitx prezenti fil-laqgha meta missierha talab EUR 1 miljun lil Lowell biex jitlaq il-fond. Qalet li m`ghandhiex idea kif Lowell imbaghad offra EUR 1.5 miljun.

Raymond Grillo mill-istaff tal-Kamra tad-Deputati pprezenta kopja tad-dibattiti fil-Parlament dwar l-Att X tal-2009.

2. Rapporti peritali

a) Ir-rapporti *ex parte* tal-Perit Godwin Abela

i) Ir-rapport tal-21 ta` Dicembru 2016

Il-Perit Godwin Abela kien inkarikat mir-rikorrenti.

L-ewwel rapport tieghu jgib id-data tal-21 ta` Dicembru 2016.

Ighid hekk :-

> *I, the undersigned Perit, was instructed by Mr Louis Apap Bologna to establish the current market value and annual rental value of the premises at Nos. 295/296 Republic Street, Valletta. The premises were visually inspected on the 12th April 2016.*
>
> 1. *The Premises are a street level retail/commercial outlet currently operating under the name `McBailey`.*
>
> 2. *The premises are located at the upper end of Republic Street as indicated on the site plan hereunder and are at the heart of the busiest shopping area in Valletta.*

3. *The premises consist of a ground floor retail area measuring approximately 31.30 square metres (5.94 X 5.27) with one entrance door and one large shop window. A spiral staircase leads to a mezzanine/first floor over the ground floor area with two windows over the street. The mezzanine/first floor has a central opening over the underlying floor. A basement underlies the entrire ground floor with a ventilator grill under the street.*

4. *The premises were constructed in load bearing masonry walls supporting steel beams and stone slab floors and are in good structural condition.*

5. *The premises are owned as to one half divided share by Mr Louis Apap Bologna and one half undivided share by a third party.*

6. *The premises are held with freehold title.*

7. *The premises are currently rented to third partes at EUR 350 per annum under the old rents regime. In accordance with the provisions of Act X of 2009, the current lease will be terminated in 2028 and the premises returned to its owners.*

8. *The basis of valuation was the capitalization of current commercial rents taking into consideration the open market rental rates for similar properties in the area, a property discount rate of 7.5% and an initial yield of 5.75%.*

9 *The commercial rental rates for the premises in question were taken as follows :*

- *Ground floor retail area at EUR 2,500 per square metre per annum ;*
- *Mezzanine floor retail area at EUR 1,250 per square metre per annum ;*
- *Cellar Storage at EUR 150 per square metre per annum.*

10 *After having taken into consideration all those factors that might have had a bearing on their value the undersigned is of the opinion that the current open market value of the premises is EUR 1,800,000 (one million eight hundred thousand euro).*

11 Further to the above, the open market annual rental value of the premises is EUR 103,500 (one hundred and three thousand five hundred euro).

12 Value of one half divided share – EUR 900,000 (nine hundred thousand euro).

13 One half of the open market annual rental value – EUR 51,750 (fifty one thousand seven hundred and fifty euro).

14 Hereunder the annual rental values at five year intervals for the thirty year period 1986-2016.

YEAR	*MARKET VALUE*	*YIELD*	*ANNUAL RENTAL VALUE (ARV)*	*½ DIVIDED SHARE OF ARV*
2016	*EUR 1,800,000,00*	*5.75%*	*EUR 103,500.00*	*EUR 51,750.00*
2011	*EUR 1,250,000.00*	*5.75%*	*EUR 71,875.00*	*EUR 35,937.50*
2006	*EUR 850,000.00*	*6.00%*	*EUR 51,000.00*	*EUR 25,500.00*
2001	*EUR 570,000.00*	*6.50%*	*EUR 37,050.00*	*EUR 18,525.00*
1996	*EUR 400,000.00*	*6.50%*	*EUR 26,000.00*	*EUR 13,000.00*
1991	*EUR 260,000.00*	*7.00%*	*EUR 18,200.00*	*EUR 9,100.00*
1986	*EUR 180,000.00*	*7.00%*	*EUR 12,600.00*	*EUR 6,300.00*

ii) <u>Ir-rapport tat-13 ta` April 2016</u>

Huwa fuq l-istess linja tar-rapport l-iehor.

iii) <u>Ix-xiehda tal-Perit Abela dwar ir-rapporti</u>

Xehed illi l-valuri li ndika jridu jigu aggornati ghall-valuri tal-lum. Bejn Dicembru 2016 u llum, jista` jkun li kien hemm awment fil-valur tal-proprjeta`.

Huwa spjega illi ghamel stima fuq bazi ta` kull hames snin bil-*baseline* tieghu tkun il-valutazzjoni tal-2016 u lura kull hames snin sal-1986. Ghall-fini ta` stima adotta diversi kriterji mahruga mill-Kamra tal-Periti li ma jinvolvux biss il-*cost of living index* u l-*property market index* mahrug mill-Bank Centrali.

Stqarr illi huwa ra kuntratti ta` bejgh u anke qies kirjiet li saru ricentement ta` postijiet aktar `l isfel go Triq ir-Repubblika.

b) <u>Ir-rapport *ex parte* tal-Perit Anthony Robinson</u>

Il-Perit Robinson kien inkarikat minn Karl Flores sabiex jaghmel *capital and rental valuation* tal-fond 295/296 bl-isem ta` McBailey, Triq ir-Repubblika, Valletta.

Hejja rapport u kkonferma l-kontenut bil-gurament :-

SUBJECT	*CAPITAL AND RENTAL VALUATION OF IMMOVABLE PROPERTY*
PROPERTY ADDRESS	*Nos 295/296, McBailey, Republic Str, Valletta*
PROPERTY TYPE	*Retail outlet*
STRUCTURE TYPE	*Loadbearing masonry walls supporting steel beam/stone slab and concrete slab roofs.*
APPROXIMATE AGE OF PROPERTY	*Late 19th/early 20th century, but recently refurbished.*

GENERAL DESCRIPTION

SITE AREA Net of wall thicknesses	*Ca. 31 m2 (Thirty one square metres-ground floor footprint)*
PLOT FRONTAGE	*Ca. 5.87m (Five point eight seven metres).*

ALLOWABLE BUILIDING FOOTPRINT	*N/A*
EXISTING BUILIDING FLOORSPACE	*At Ground floor level-31m2* *At Mezzanine Level – 31 m2* *At Cellar level – 24 m2*
ALLOWABLE NO OF FLOORS	*N/A*
EXTERNAL FINISHES	*In satisfactory condition*
INTERNAL FINISHES	*Recently refurbished to high standard.*
SERVICES	*In good working order.*
IMPORTANT FEATURES	*Located in best part of Republic Str., being the street with the highest retail commercial value on the island.*
TENURE AS REPORTED BY CURRENT PROPRIETOR/OCCUPANT	*Rental as regulated by the Civil Code.*
2.ACCOMODATION	
	At cellar level – store *At ground floor – retail space* *At meazzanine level – retail space*
3.STRUCTURAL CONSIDERATIONS	
	No symptoms of structural movement or other defects observed.
4.PLANNING CONSIDERATIONS	
	Irrelevant as no other use apart form the existing Class 4B retail would be economically more profitable.
ALLOWABLE DEVELOPMENT WITHIN CURRENT PLANNING FRAMEWORK	*None.*
5.2016 CAPITAL MARKET VALUE AS DEFINED IN ARTICLE 49(2) OF THE EUROPEAN COUNCIL DIRECTIVE	
	In view of the information forwarded to me during my inspection, in consideration of the above observations, and by comparisom with the value quoted for similar properties in the area, the sum of

	Euro Seven Hundred and Thirty Five Thousand (EUR 735,000) would be a reasonable estimate of the Current Capital market value of this property.
6.2016 RENTAL MARKET VALUE AS DERIVED FROM ABOVE CAPITAL VALUE AND AN EXPECTED INITIAL YIELD ON INVESTMENT OF 7% (as calculated from risk free GBR of 5%, Risk premium of 2%, Tenant Risk of 1%, net Growth rate after allowing for depreciation of 1% ; IY =RFR+r-g+d)	
	In consideration of the above Capital Open Market Values for similar properties in the area, the sum of Euro Fifty One Thousand, Four hundred and Fifty (EUR 51,450) per annum would be a reasonable estimate of the current Rental market value of this property.
7.RETROSPECTIVE RENTAL MARKET VALUES at 5 year intervals from 2016 to 1986 AS DERIVED FROM ABOVE RENTAL VALUE FOR 2016, CBOM property price indices for period 2017 to 2000 and Table 18 (Average property purchase price by foreigners for period 2002 to 1982) of CPD Accredited Valuation Course organised by KTP in 2004	
Year	*Annual rental Value (EUR)*
2016	*51,450 (One half ARV = Eur25,725)*
2011	*41,750 (One half ARV = Eur 20,875)*
2001	*25,200 (One half ARV = Eur 12,600)*
1996	*11,800 (One half ARV = Eur 5,900)*
1991	*7,300 (One half ARV = Eur 3,650)*
1986	*3,412 (One half ARV = Eur 1,706)*

c) Ir-relazzjoni tal-perit tekniku Perit Mario Cassar

Jinghad hekk :-

DESKRIZZJONI TAL-FOND.

*Waqt l-access **tat-23 ta` Jannar 2018**, l-esponent ha qisien interni tal-lok, kif ukoll fotografija. Il-fond jikkonsisti fi pjan kummercjali, fil-livell ta` Triq ir-Repubblika illi ghandu wisa` ta` cirka 6.0 metri, u fond ta` cirka 5.1 metri. Dan jirrizulta f`arja superficjali ta` cirka 30.6 metri kwadri u huwa msaqqaf fuq 3.6 metri dawl. L-esponent ghaamel referenza ghall-pjanta illi hemm a fol 29 tal-*

*process, u qieghed jipprezenta l-istess dokument1. Il-pjanta **Dok MP2**) fiha hemm indikat access ghal kantina differenti minn dak illi hemm fil-prezent. Il-fond kummercjali ghandu faccata fuq Triq ir-Repubblika ta` cirka 6 metri.*

Mil-livell ta` Triq ir-Repubblika, wiehed jaccedi ghal livell sovrastanti ta` l-ewwel sular, minn garigor antik tal-gebel. Dan il-livell jservi ghall-istess natura kummercjali, u ghandu l-istess arja superficjali tal-livell sottostanti, jigifieri ta` cirka 30.6 metri kwadri izda huwa msaqqaf fuq gholi ta` 2.4 metri dawl.

Dawn il-livelli jikkonsistu f` going concern kummercjali, ta` hwejjeg tal-moda femminili.

Mill-pjan terran wiehed jaccedi ghall-livell sottostanti, minn garigor tal-metall, liema livell jikkonsisti f` kantina illi ghandha arja superficjali ta` cirka 24 metri kwadri. Din tintuza bhala mahzen tal-merkanzija.

Illi z-zewg livelli kummercjali, dak tal-pjan terran u dak ta` l-ewwel sular huma interkonnessi vertikalment minn fetha fis-saqaf tal-pjan terran ta` qies ta` cirka 1.7metri bi 2.3 metri, illi tohloq vizwal interessanti fl-intier tal-kumpless.

Il-lok jidher ghadu kemm gie refurbished up to good standards.

NOTA TAL-ESPONENT

L-esponent innota illi l-garigor tal-gebel jghaqqad biss il-pjan terran ma` dak ta` l-ewwel sular.

Mill-pjanta a fol 29 tal-process, jidher illi l-access vertikali, mill-pjan terran ghall-livell sottostanti, dak tal-kantina kien tramite tarag dritt bi kwarti pjani u mhux minn garigor tal-metall kif huwa l-access prezentement.

KONSIDERAZZJONIJIET

L-esponent ikkonsidra kirjiet kummercjali fl-akkwati, flimkien ma` database ippubblikata mill-

Lands Authority u ghalhekk seta` jestendi l-valur lokatizzju ghal din il-proprjeta`.

- *F` dak illi ghandu x`jaqsam ma` retail outlets. Jirrizulta wkoll illi r-rental range potenzjali ghal retail meta l-esponent ikkunsidra l-lok huwa ta` EUR 2,500 ghal kull metru kwadru, annwali. Din ir-rata hija applikabbli ghal pjan terran illi huwa l-iktar livell espost ghal kummerc passagg fil-livell ta` triq ir-Repubblika.*

- *Il-livell ta` l-ewwel sular b`rata ta` 0.1 tar-rata tal-pjan terran illi tirrizulta f`rata ta` EUR 250 annwali ghal kull metru kwadru.*

- *Rata ta` EUR 50 Euro annwali ghal kull metru kwardru ghandha tigi applikata ghal kantina, illi tintuza bhala mahzen.*

<u>VALUTAZZJONI TAL-VALUR LOKATIZZJU FIS-SENA 2017</u>

Wara, illi l-esponent ha in konsiderazzjoni l-fatturi illi jinkludu, il-lok, in-natura tal-fond, id-daqs u illi huwa going concern, jirrizulta illi l-valur lokatizju prezenti jammonta ghal ***EUR 86,540 annwali.***

- *Illi jirrizulta illi l-valur tal-proprjeta` ta` dan it-tip ghola erbgha darbiet akter bejn is-sena 1986 u s-sena 2017, jigifieri il-valur lokatizzju fis-sena 1986 jirrizulta illi kien ta` EUR 21,612.*

- *L-esponent ghamel ezercizzju fejn "mar lura" u qieghed jipprezenta l-valur lokatizzju mill-1986 sas-sena 2017, b` revizjoni fuq perijodi ta` hames snin, b` rata kostanti.*

<u>VALUTAZZJONI TAL-VALUR TAS-SUQ</u>

Wara illi l-esponent ikkonsidra l-fatturi illi ghamel referenza ghalihom aktar il-quddiem, jirrizulta illi ***l-valur prezenti tas-suq, liberu u frank, tal-proprjeta` kummercjali in kwistjoni huwa ta` EUR 1,500,000.***

Notamenti :

Il-prezz prezenti tas-suq huwa ekwivalenti ghall-"Market Value".

Dan ir-rapport huwa intiz ghall-uzu indikat hawn fuq biss. L-esponent ma jista` jaccetta l-ebda responsabbilita` jekk dan ir-rapport jigi uzat ghal skop oltre dak indikat.

L-istruttura giet spezzjonata b` mod viziv biss: dawk il-partijiet tal-proprjeta` li huma mghottijin jew li m` hemmx access ghalihom ma gewx spezzjonati u dawn il-partijiet huma meqjusin li jinsabu f` kundizzjoni tajba. Dan ir-rapport ma jistax jigi interpretat li jikkonferma l-istabbilita` u l-integrita` tal-istruttura u l-bini.

d) <u>L-eskussjoni</u>

Il-perit tekniku wiegeb ghal domandi in eskussjoni.

Xehed illi ma hemmx *property price index* tal-bejgh tal-proprjeta`. Hemm biss *market values* li minnhom jirrizultaw valuri lokatizji illi jistghu jigu komparati ma` valuri lokatizji ohra. Ir-rata tal-valur lokatizju korrenti kull metru kwadru fi Triq ir-Repubblika huwa ta` madwar EUR 2,500 fil-livell tat-triq.

Qal illi l-indici tal-Bank Centrali ta` Malta u tal-Ufficcju Nazzjonali tal-Istatistika ma jirriflettux il-valur tas-suq ta` proprjeta` kummercjali.

Ghamel referenza ghal *Table 20 : Retail Premises Property Index 1982-2016 : DHI Periti.*

Qal li l-indici tal-inflazzjoni mhux mehud in konsiderazzjoni biex jigi stabbilit il-valur lokatizju.

Fisser illi sabiex wasal ghac-cifra ta` EUR 1,500,000, huwa ghamel komputazzjoni fejn (i) immoltiplika l-arja tal-pjan terran li tammonta ghal 31 metri kwadri bil-figura ta` EUR 2,500 ; (ii) l-arja ta` l-ewwel sular – ta` 31

metri kwadri - immoltiplikaha b`EUR 250 ghal kull metru kwadru ; u (iii) l-arja tal-kantina ta` 24 metri kwadri mmoltiplikaha b` EUR 50 kull metru kwadru. Dawn il-konteggi jammontaw ghal valur lokatizju ta` EUR 86450. Imbaghad kien ikkapitalizzati b`5.75% sabiex jasal ghall-valur tas-suq.

Xehed illi l-post kien stmat bhala *a going concern* u allura entita` kummercjali.

Qal illi ma rax kuntratti ta` postijiet fl-inhawi.

Sostna li stima ta` post ma ghadhiex tkun fondata fuq opinjonijiet personali u oggettivi, peress li llum hemm metodi xjentifici fuq x`hiex wiehed ghandu jibbaza.

Huwa qal li d-*database* li ghamel referenza ghaliha hija proprjeta` ta` l-Awtorita` ta` l-Artijiet.

Spjega li huwa wasal ghall-valur lokatizju tramite metodu xjentifiku li jiehu in konsiderazzjoni fatturi bhal *yield, property discounted rate,* inflazzjoni u *advance rental payment.*

Qal li *Table 20 – Retail Premises Property Index 1982- 2016 : DHI Periti- Consolidated Document on Property Valuation* juri l-awment tal-valur tas-suq ta` proprjeta` kummercjali mill-1982 sal-2016. Juri illi valur ta` din it-tip ta` proprjeta` zdied b`madwar sitt darbiet. Ma jfissirx izda li l-valur lokatizju joghla wkoll b`sitt darbiet.

Kompla jghid illi huwa fittex fil-*website* ta` Remax dwar proprjetajiet kummercjali fil-Belt Valletta. Bini ta` 120 metri kwadri fuq tlett livelli kellu prezz ta` EUR 130,000. Daqs ta` 35 metri kwadri kellu prezz ta` EUR 70,800.

Ikkonferma li bhala *catchment area,* Triq ir-Repubblika, Valletta, iggib wiehed mill-aktar *commercial rental values* gholjin fil-pajjiz.

III. <u>L-ewwel (1) eccezzjoni tal-intimat Avukat Generali</u>

L-Avukat Generali jeccepixxi hekk :-

...

*fl-ewwel lok ir-rikorrent ghandu jindika b`liema ligi l-awturi tieghu gew allegatament imgieghla li jgeddu l-kirja wara li din ghalqet fl-1926. Dan qed jintalab ghax l-**Ordinanza XXI** (li ghall-bidu gie nomenklat bhala **Kap 109 tal-Ligijiet ta` Malta** u mbaghad wara l-ahhar revizjoni tal-edizzjoni tal-ligijiet sar kif nafuh illum il-**Kap 69 tal-Ligijiet ta` Malta**) dahal fis-sehh fl-1931. Ghalhekk jekk l-awturi tar-rikorrenti komplew il-kirja wara l-1926 u qaghdu ghad-dispozizzjonijiet tal-**Kap 69 tal-Ligijiet ta` Malta** dan ghamluh mhux ghaliex gew imgieghla bil-ligi izda ghax hekk riedu skont ir-rieda taghhom."*

Dwar din l-eccezzjoni, ir-rikorrent ma kkummenta xejn.

Da parti tieghu, l-Avukat Generali dahal fil-fond tal-eccezzjoni.

Fin-nota ta` osservazzjonijiet tieghu, l-Avukat Generali jsostni li l-legislatur dahhal ligi specifika dwar it-tigdid tal-kera ghall-ewwel darba bl-Att I tal-1925. L-Att kellu l-isem : "*An Act to make special temporary provisions respecting rent and conditions in re-letting immovable urban property.*" L-Att kien validu sal-31 ta` Dicembru 1927.

L-Art 3 ta` l-Att I tal-1925 kien jaqra :

"*Notwithstanding any law or custom to the contrary, the landlord of immovable property, who at the expiry of the period of the tenancy whether such period be conventional, legal, ordinary or granted in consequence of the provisions of this Act, intends to obtain possession of such property or to increase the rent or impose new conditions for the reletting of the same, shall give notice of such intention by way of an official letter to the tenant within one month from the date on which the tenancy expires.*

In default of such notice, the landlord shall be held to acquiesce to a tacit reletting upon the same

conditions and with the same rights for a period prescribed by the provisions of article 12898 of Ordinance No. VII of 1868."

Skont l-Art 4 ta` l-istess Att :

"*the tenant who does not wish to consent to the delivery of the property and who has no intention to accept the new rate of the rent or the fees conditions fixed by the landlord may have recourse to the Arbitral Commission referred to in article 7. For that object the tenant shall apply in the manner prescribed by article 16 to the Commission within the peremptory term of fifteen days reckoned from the date of service on him of the said official letter for obtaining a prorogation of the lease or for the fixing of a just rate of rent and of just conditions for a new lease."*

L-Art 6 imbaghad kien jistipola li :

"the Arbitral Commission shall in no case grant a prorogation or shall decide on the rent or on the conditions of the new lease for a period exceeding three years."

In segwitu dahal l-Att XXIII tal-1929 intitolat : *An Act to make temporary provisions respecting the rent and the conditions in re-letting immovable urban property and for purposes connected therewith.*

L-Avukat Generali sahaq illi kuntrarjament ghall-Att precedenti, bl-Att XXIII tal-1929, kellu jkun is-sid li jmur quddiem il-Bord li Jirregola l-Kera biex ma tiggeddidx il-kera jew biex tizdied il-kera.

Skont l-Art 12 ta` l-Att, is-sid seta` biss jitlob ir-radd tal-fond bil-permess tal-Bord li Jirregola l-Kera jekk jintwera li l-inkwilin ma hallasx il-kera jew jekk il-fond kien mehtieg ghall-bzonnijiet personali tas-sid jew tal-axxendenti jew dixxendenti tieghu.

Skont l-Art 12 u 15 ta` dan l-Att, fil-kaz ta` hanut, is-sid ma setax jiehu lura l-post jekk dan riedu ghall-bzonnijiet personali tieghu.

Imbaghad dahlet fis-sehh l-Ordinanza XXI tal-1931 – Kap 109 tal-Ligijiet ta` Malta.

Bis-sahha ta` din l-Ordinanza, il-protezzjoni tat-tigdid tal-kera saret definittiva.

Biz-zmien, saru diversi emendi fil-ligijiet, fosthom dawk li saru bl-Att X tal-2009.

In partikolari bl-Att X tal-2009, kien introdott l-Art 1531I fil-Kap 16. Hemm kien stabbilit li t-tigdid *ipso jure* ta` kirja kummercjali ghandha tintemm fis-sena 2028.

L-Avukat Generali jirrimarka li l-kirja tal-hanut de quo kienet imgedda bi ftehim tat-22 ta` Jannar 1922 ghal zmien ta` erba` snin. Meta kien ghaddej dan il-ftehim, dahal fis-sehh l-Att I tal-1925. Ma tressqux provi li s-sidien baghtu ittra ufficjali biex ma jgeddux il-kera jew talbu zieda fil-kera, ghalhekk, fin-nuqqas, il-kirja kienet imgedda bl-isess kundizzjonijiet, ossija ghal erba` snin ohra sas-sena 1930 bil-kera ta` mitt lira sterlina fis-sena.

L-Avukat Generali jishaq illi bl-introduzzjoni ta` l-Att XXIII tal-1929, is-sid ma setax jirrifjuta milli jgedded il-kera jew izid il-hlas taghha hlief bil-permess tal-Bord li Jirregola l-kera. Ghalhekk, l-inkwilini kellhom protezzjoni temporanja sakemm eventwalment kien impost obbligu ta` tigdid tal-kera b`mod definittiv bl-Ordinanza XXI tal-1931.

Propju ghalhekk l-Avukat Generali jiddikjara li ma kienx ghadu fuq l-eccezzjoni ghaliex l-awturi tar-rikorrenti komplew il-kirja wara l-1926 mhux ghaliex huma riedu volontarjament izda ghaliex kienu milquta bl-Att I tal-1925, bl-Att XXIII tal-1929, bl-Ordinanza XXI tal-1931 (illum Kap 69) u bil-Kap 16 tal-Ligijiet ta` Malta.

Dan kollu premess,

Ladarba l-Avukat Generali ghazel li jirtira din l-ewwel eccezzjoni, il-Qorti sejra tastjeni milli tiehu konjizzjoni ulterjuri taghha.

IV. <u>It-tieni (2) eccezzjoni tal-intimat Avukat Generali u t-tielet (3) eccezzjoni tal-intimati l-ohra</u>

It-tieni eccezzjoni tal-Avukat Generali tghid :-

> *Illi dejjem bla hsara ghal dak fuq imsemmi, l-artikolu 37 tal-Kostituzzjoni ta` Malta indikat mir-rikorrent mhuwiex applikabbli ghaliex il-kirja ta` Flores hija mharsa bil-Kap 69 tal-Ligijiet ta` Malta, li bhala ligi ezistenti qabel l-1962 tinsab protetta bl-artikolu 47(9) tal-Kostituzzjoni. Dan l-artikolu jipprovdi testwalment li, "Ebda haga fl-artikolu 37 ta` din il-Kostituzzjoni <u>ma ghandha tolqot il-hdim ta` xi ligi fis-sehh minnufih qabel it-3 ta` Marzu, 1962</u> jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data (jew xi ligi li, minn zmien ghal zmien, tkun emendata jew sostitwita bil-mod deskritt f`dan is-subartikolu)...";*

It-tielet eccezzjoni tal-intimati l-ohra hija fuq l-istess linja.

Dawn qeghdin ighidu illi l-ilment tar-rikorrent kif ibbazat fuq l-Art 37 tal-Kostituzzjoni ta` Malta ("**<u>il-Kostituzzjoni</u>**") ma jistax ikun milqugh billi l-Art 37 ma jistax jolqot l-applikazzjoni ta` ligi li kienet fis-sehh minnufih qabel it-3 ta` Marzu 1962 jew xi ligi maghmula fi jew wara dik id-data li temenda jew tissostitwixxi xi ligi fis-sehh minnufih qabel dik id-data.

L-insistenza hi li ma jistax ikun invokat ksur tal-Art 37 tal-Kostituzzjoni billi l-kirja tal-intimat Flores pro et noe ghandha t-tutela ta` ligi u cioe il-Kap 69 li kienet fis-sehh qabel l-1962 u allura hija protetta bl-Art 47(9) tal-Kostituzzjoni.

Karl Flores pro et noe kompla sahaq dwar dan fir-raba` eccezzjoni.

Sar l-argument li l-ligijiet kollha li b`xi mod intromettew ruhhom fil-kirja mertu ta` din il-kawza, ossija l-Att I tal-1925, l-Att XXIII tal-1929, l-Ordinanza XXI tal-1931 (illum Kap 69) u l-Kap 16 tal-Ligijiet ta` Malta kollha kienu ntrodotti fis-sistema legali sa minn hafna qabel Marzu tal-1962. Ghalhekk abbazi tal-Art 47(9) tal-Kostituzzjoni, dawk il-ligijiet ma jistghux ikunu soggetti ghall-applikazzjoni ta` l-Art 37 tal-Kostituzzjoni.

L-Avukat Generali jnsostni l-posizzjoni tieghu billi jirreferi ghal din il-gurisprudenza tal-Qorti Kostituzzjonali : **L-Avukat Dottor Rene Frendo Randon et vs Kummissarju tal-Artijiet** deciza fl-10 ta` Lulju 2009 ; **Peter Azzopardi vs Kummisssarju tal-Artijiet** deciza fil-11 ta` Novembru 2011 ; **Vica Limited vs Kummissarju tal-Artijiet et** deciza fit-3 ta` Frar 2012. Kif ukoll ghad-decizjoni ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2012 fil-kawza fl-ismijiet **Joseph Camilleri et vs Kummissarju tal-Artijiet et**.

Il-Qorti rat il-gurisprudenza dwar l-Art 37 u l-Art 47(9) tal-Kostituzzjoni fil-kuntest tal-Kap 88 tal-Ligijiet ta` Malta.

Fil-kawza fl-ismijiet **Lawrence Fenech Limited vs Kummissarju tal-Artijiet et** deciza mill-Qorti Kostituzzjonali fid-9 ta` Novembru 2012 tressaq aggravju fis-sens li l-Ewwel Qorti ma setghetx issib ksur tal-Art. 37 tal-Kostituzzjoni minhabba l-Art 47(9). L-aggravju kien milqugh propju ghaliex il-promulgazzjoni tal-Kap 88 kien jipprecedi t-3 ta` Marzu 1962.

Fis-sentenza ta` din il-Qorti ta` l-4 ta` Ottubru 2016 fil-kawza fl-ismijiet **Melina Micallef vs Il-Kummissarju tal-Artijiet** (hekk kif riformata mill-Qorti Kostituzzjonali fl-24 ta` Novembru 2017) kien ribadit illi billi *d-disposizzjonijiet tal-Kap 88 kienu saved bl-Art 47(9) tal-Kostituzzjoni ma tistax tigi nvokata vjolazzjoni tal-Art 37 tal-Kostituzzjoni.*

Similment fis-sentenza ta` din il-Qorti tat-3 ta` Ottubru 2014 fil-kawza fl-ismijiet **Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet et** (konfermata mill-Qorti Kostituzzjonali fl-24 ta` April 2015) inghad hekk :-

> *L-intimati jikkontendu li l-Art 37 tal-Kostituzzjoni mhuwiex applikabbli ghall-kaz tal-lum in vista tal-Art 47(9) tal-Kostituzzjoni.*
>
> *Il-Qorti terga` taghmel riferenza ghas-sentenza tal-Qorti Kostituzzjonali fil-kawza "**Bezzina Wettinger et vs Il-Prim` Ministru et**" (op. cit.)*
>
> *Fis-sentenza taghha, il-Qorti Kostituzzjonali kkonfermat dak li qalet l-Ewwel Qorti :-*
>
> *Illi ghalhekk din il-Qorti taqbel mal-konkluzjoni ta` l-Ewwel Qorti illi l-Kapitolu 88 – bhala ligi li kienet*

fis-sehh qabel it-3 ta` Marzu 1962 – huwa salvagwardjat bl-istess Kostituzzjoni ai termini ta` l-Artikolu 47(9), u konsegwentement dan l-aggravju qed jigi respint.
*Illi dwar dan il-punt, din il-Qorti taghmel riferenza wkoll ghas-sentenza ta` din il-Qorti (PA/RCP) tat-22 ta` Marzu 2002 fil-kawza "**Francis Bezzina Wettinger et vs Kummissarju tal-Artijiet**" fejn inghad hekk :-*

Illi kif inghad f`**Pawlu Cachia vs Avukat Generali et** (9/4/99 Rik. Nru. 586/97/VDG), il-hdim ta` xi ligi fis-sehh minnufih qabel id-data msemmija ma tistax tkun anti-kostituzzjonali fis-sens li tippekka kontra l-artikolu 37. L-istess jinghad ghal xi amending act jew substituting act maghmula f`dik id-data jew wara dik id-data purche` li tali att li hekk jemenda jew jissostitwixxi dik il-ligi ma jkunx jaghmel xi wahda mill-affarijiet imsemmi fil-paragrafi (a) sa (d) tal-imsemmi artikolu 47(9).

Illi kif kompliet tghid dik il-Qorti, ma hemmx dubbju li l-Kap. 88 kien fis-sehh qabel it-3 ta` Marzu 1962. Ma hemmx dubju wkoll li l-imsemmija ligi giet emendata wara dik id- data, izda r-rikorrent f`ebda hin ma ndika xi emenda li b`xi mod taqa` taht xi wiehed mill-paragrafi (a) sa (d) tal-artikolu 47(9). Illi hafna mill-emendi maghmula wara t-3 ta` Marzu 1962 kienu ta` natura formali bhas-sostituzzjoni tal-Gvernatur Generali bil-President ta` Malta. Illi din il-Qorti b`hekk ezaminat jekk fir-rigward tad-dikjarazzjonijiet ta` esproprjazzjoni meritu ta` din il-kawza u fir-rigward tal-proceduri ghall-kumpens gewx imhaddma xi amending provisions li jaqghu taht l-imsemmija paragrafi (a) sa (d). Din il-Qorti ma tarax li dan huwa l-kaz, fis-sens li d-dispozizzjonijiet imhaddma fir-rigward tal-ordnijiet ta` esproprjazzjoni de quo huma kollha salvati bl-Artikolu 47(9) milli jiksru l-Artikolu 37.

Issa l-Qorti tirribadixxi li fil-kawza tal-lum, ir-rikorrenti qeghdin jilmentaw minn vjolazzjoni tal-Art 37 tal-Kostituzzjoni ghaliex il-Bord tal-Arbitragg dwar l-Artijiet illikwida kumpens li, skond ir-rikorrenti, ma kienx xieraq u adegwat.

Il-Qorti tirrileva li l-kumpens li l-Bord kien u ghadu jillikwida jsegwi l-kriterji li huma stabbiliti fid-disposizzjonijiet tal-Kap 88. Ghalhekk billi l-Kap 88 huwa ligi li giet saved ai termini tal-Art 47(9) tal-Kostituzzjoni, din l-Qorti mhijiex sejra tqis ix-xorta ta` ilment li ghandhom ir-rikorrenti skond l-Art 37 tal-Kostituzzjoni fejn dan l-ilment jolqot it-twettieq tal-Kap 88.

Riferibbilment ghall-kaz tal-lum, ma hemmx dubju illi l-ligijiet relattivi ghall-kirja mertu tal-kawza kienu saru qabel it-3 ta` Marzu 1962.

Huwa minnu li saru emendi ghal dawk il-ligijiet. Il-Qorti hija sprovvista minn prova li xi emendi li kienu jaqghu taht xi wiehed mill-paragrafi (a) sa (d) tal-Art 47(9) tal-Kostituzzjoni.

Din il-Qorti ssostni li d-disposizzjonijiet mertu tal-kawza tal-lum kienu *saved* bl-Art 47(9) tal-Kostituzzjoni u ghalhekk ma tistax tigi pretiza vjolazzjoni tal-Art 37 tal-Kostituzzjoni.

Il-Qorti qeghda tilqa` l-eccezzjonijiet fuq riferiti.

V. <u>It-tielet (3) eccezzjoni tal-intimat Avukat Generali u r-raba` (4) eccezzjoni tal-intimat Flores pro et noe</u>

In vista tal-pronunzjament taghha dwar l-eccezzjonijiet li kienu trattati fit-taqsima precedenti, il-Qorti qeghda tastjeni milli tiehu konjizzjoni ulterjuri tal-eccezzjonijiet ta` din it-taqsima.

VI. <u>L-ewwel (1) eccezzjoni tal-intimat Karl Flores pro et noe</u>

Kienet eccepita l-prova tat-titolu tar-rikorrent.

Tajjeb jinghad illi l-kawza tal-lum mhijiex l-*actio reivindicatoria*.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **Robert Galea vs Avukat Generali et** din il-Qorti diversament presjeduta qalet hekk :-

> *"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fundamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fundamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **Ian Peter Ellis et vs Avukat Generali et**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*
>
> *Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."*

Kien muri mir-rikorrent illi ghandu titolu tajjeb ghall-fond de quo.

Apparti x-xiehda tar-rikorrent, il-provi li ressaq ir-rikorrent jinkludu il-prova tat-titolu naxxenti mill-wirt u l-kuntratt tal-qasma.

It-titolu li rrizulta li ghandu r-rikorrent jaghtih il-jedd li jitlob il-harsien tal-jeddijiet tieghu fil-kaz li jkun hemm vjolazzjoni ta` dawn il-jeddijiet.

Irrizulta li r-rikorrent ghandu l-parti A tal-hanut in kwistjoni. Skont il-kuntratt ta` divizjoni tal-11 ta` April 1980, terzi persuni hadu l-propjeta` tal-parti B tal-hanut.

Dawn il-provi ma kienux ikkontestati.

L-eccezzjoni qeghda tkun respinta.

VII. It-tieni (2) eccezzjoni tal-intimat Karl Flores pro et noe

Kien eccepit li r-rikorrent ma ezawriex ir-rimedji ordinarji disponibbli. Ghalhekk il-Qorti ghandha tiddeklina milli tisma` din il-kawza.

Tajjeb osserva r-rikorrent fin-nota ta` osservazzjonijiet tieghu illi l-kera hija kontrollata b`ligi, u ghalhekk huwa ma seta` jaghmel xejn biex itejjeb il-pozizzjoni tieghu. L-ilment tieghu huwa dwar dak li johrog mil-ligi li attwalment tapplika ghall-fond tieghu li huwa mikri lil terzi. Il-kera hija kontrollata u r-ripreza tal-fond mhjiex possibbli.

Il-Qorti tosserva li l-emendi ghall-Kap 16 li saru bl-Att X tal-2009 ma jistghux jitqiesu bhala li jaghtu rimedju effettiv ghal-lanjanzi tar-rikorrent ghaliex tirrizulta diskrepanza sproporzjonata kontra r-rikorrent bejn l-awment fil-kera skont l-Art 1531D tal-Kap 16 u l-valur lokatizju tal-fond fis-suq hieles.

L-intimati rrilevaw illi jekk ir-rikorrent ried izid il-kera, huwa kellu jibghat ittra ufficjali bit-talba tieghu. Ma kien hemm xejn li jzomm lir-rikorrent milli jagixxi ai termini tal-Kap 69.

F`dan il-kuntest, fis-sentenza li tat fis-27 ta` Marzu 2015 fil-kawza **Ian Peter Ellis et vs Avukat Generali et** il-Qorti Kostituzzjonali rrilevat illi :-

> *Dwar il-materja ta` awment fil-kera u n-nuqqas tal-applikanti li jirrikorru quddiem il-Bord li Jirregola l-Kera, il-Qorti Ewropeja fil-kawza **Ghigo v. Malta** [Appl. 31122/05 –para.66] osservat :*
>
> *"It is true that the Government reproached the applicant for his failure to institute proceedings before the Rent Regulation Board to fix a fair rent for the premises.... However it has not been shown by any concrete examples from domestic law and practice that this remedy would have been an effective one."*

In sostenn ta` l-posizzjoni tieghu, l-intimat Flores jaghmel referenza ghas-sentenza li tat il-Qorti ta` l-Appell (Sede Inferjuri) fil-kawza fl-ismijiet "**Emanuel Said Limited vs Carmel Zammit et**" fil-25 ta` Mejju 2016.

Tajjeb li ssir analizi tal-iter ta` din il-kawza.

Hemm is-sidien Carmel Zammit et kienu pprezentaw ittra ufficjali sabiex il-kera jizdied. L-inkwilina Emanuel Said Limited oggezzjonat bil-konsegwenza li kien prezentat rikors quddiem il-Bord li Jirregola l-Kera, sabiex it-talba ghal zieda fil-kera tkun michuda. Il-Bord laqa` t-talba ta` l-inkwilina, wara li ddikjara li billi r-rapport taz-zewg membri teknici tal-Bord kien unanimu, kellu jaddotta r-rapport taghhom fis-sens li l-kera attwali kien diga`jeccedi l-40% li bih il-fond kien mikri jew seta` kien mikri qabel l-4 t`Awwissu 1914 a tenur tal-Art 5(b) tal-Kap 109, u billi, ghalkemm is-sidien qanqlu l-ksur tal-jedd fundamentali tat-tgawdija tal-proprjeta`, il-Bord ma setax jidhol fil-kwistjoni ghax din kienet tmur oltre l-kompetenza tieghu. Inoltre lanqas ma saret talba ghal riferenza kostituzzjonali.

Sar appell mis-sidien.

Fis-sentenza taghha, il-Qorti tal-Appell Inferjuri ghamlet hi referenza lil din il-Qorti (diversament presjeduta) fil-Gurisdizzjoni Kostituzzjonali taghha u din b`sentenza tas-7 ta` Lulju 2010, din il-Qorti diversament presjeduta sabet li hemm ksur tal-Art 6 tal-Konvenzxjoni u tal-Art 1 Prot 1 tal-Konvenzjoni.

Mid-decizjoni sar appell mill-Avukat Generali.

B`sentenza li tat il-Qorti Kostituzzjonali fil-5 ta` Lulju 2011 ma nstab l-ebda ksur tal-Art 1 Prot 1 u ghalhekk ma kienx hemm ghalfejn tistharreg l-ilment skont l-Art 6..

Fit-28 ta` Dicembru 2011 is-sidien hadu l-kaz quddiem l-ECHR.

B`decizjoni moghtija fit-30 ta` Lulju 2015, li saret finali fit-30 ta` Ottubru 2015, fil-kaz ta` **Zammit and Attard Cassar v Malta** l-ECHR iddikjarat li kien hemm ksur tal-Art 1 Prot 1 tal-Konvenzjoni bil-konsegwenza li l-Istat ta` Malta kien ordnat ihallas lis-sidien l-ammont is-somma ta` €40,000 bhala danni pekunjarji ghaz-zmien ta` bejn l-2002 sa 2014 u kif ukoll €10,000 spejjez.

Wara din id-decizjoni tal-ECHR, il-Qorti ta` l-Appell (Sede Inferjuri) ippronunzjat ruhha fis-sens illi : (i) bis-sentenza tal-ECHR, is-sidien kienu kkumpensati ghall-kera li tilfu ; ghalhekk ma setghux jippretendu li jircievu minghand l-inkwilin xi kera ulterjuri ghas-snin 2002 sal-2014, hlief ghall-kera li effettivament l-inkwilina ddepozitat fil-qorti u ; (ii) l-ECHR iddecidiet

li l-ligi li tirregola l-awment tal-kera [Artikolu 4(2) tal-Kap. 69], tikser l-Art 1 Prot 1.

Il-Qorti tal-Appell irrimarkat :-

"*Ovvjament il-Bord ma jistax japplika ligi li giet dikjarata li tilledi dritt fundamentali. L-Artikolu 1531D tal-Kodici Civili, introdott bl-emendi li saru fl-2009, ma kienx bizzejjed sabiex jirrimedja ghal dan il-ksur….Bir-ragun jinghad li l-emendi tal-2009 ma kienux bizzejjed gialadarba l-awment kien qieghed jigi kkalkolat fuq kera li kienet hafna inqas minn dik tas-suq, u dan minhabba r-restrizzjoni kontemplata fl-Artikolu 4(2) tal-Kap. 69."*

Ghalhekk, dak li ghamlet il-Qorti ta` l-Appell kien li kkonkludiet li dak li ghadu ncert jirrigwarda biss il-kera mis-sena 2015 `il quddiem.

Peress li d-decizjoni tal-Bord li Jirregola l-Kera kienet ibbazata fuq dak li jghid l-Art 4(2) tal-Kap 69, il-Qorti ta` l-Appell baghtet l-atti lura lill-Bord sabiex dan jistabilixxi l-kera dovuta b`effett mill-1 ta` Jannar 2015.

Fid-dawl tal-premess il-Qorti hija tal-fehma li, tenut tal-fattispeci tal-kaz, ma jistax validament jinghad li r-rikorrent kellu rimedju ordinarju <u>effettiv u adegwat</u> fejn u kif jindirizza l-lanjanzi tieghu. Fic-cirkostanzi l-ilmenti kostituzzjonali u konvenzjonali tieghu jimmeritaw li jigu trattati u decizi mill-qrati ta` gurisdizzjoni kostituzzjonali.

Il-konkluzjoni tal-Qorti ssib sostenn fil-gurisprudenza interpretattiva li tittratta dwar l-ezercizzju tad-diskrezzjoni kontemplata fl-Art 46[2] tal-Kostituzzjoni u fl-Art 4[2] tal-Konvenzjoni (ara *inter alia* : Qorti Kostituzzjonali : **<u>David Axiak vs Awtorita` tat-Trasport Pubbliku</u>** : 14 ta` Mejju 2004 ; u **<u>Salvatore Abdilla vs Onor. Seg. Parlamentari Ambjent</u>** : 30 ta` Mejju 2003)

L-eccezzjoni qeghda tkun michuda.

VIII. <u>Il-hames (5) eccezzjoni tal-intimat Karl Flores pro et noe</u>

Kien eccepit illi ghal dak li jirrigwarda l-ilment kif ibbazat fuq Art 1 Prot 1 tal-Konvenzjoni, il-kirja tmur lura ghaz-zmien ta` qabel Malta ffirmat

u rratifikat il-Konvenzjoni, u kienet il-frott ta` ligijiet li kienu veljanti qabel Malta ffirmat u rratifikat il-Konvenzjoni, u qabel ma dahalt id-dritt tal-petizzjoni individwali. Skont l-eccezzjoni, il-Qorti ma tistax tqis l-ilment *rationae temporis* u *rationae materiae*.

Fis-sentenza li tat din il-Qorti diversament presjeduta fis-26 ta` Novembru 2009 fil-kawza fl-ismijiet **Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et** (kif riformata mill-Qorti Kostituzzjonali fis-7 ta` Dicembru 2010) inghad hekk :-

> *"Illi preliminarjament, l-intimat iwiegeb illi peress illi t-talbiet rikorrenti huma bbazati fuq ksur tal-Konvenzjoni Ewropeja, li saret parti mill-ligi lokali wara biss li sehh il-ksur ilmentat mir-rikorrenti, ir-rikorrenti ma ghandhomx rimedju taht l-Att dwar il-Konvenzjoni Ewropeja. L-artikolu 7 tal-Att Dwar il-Konvenzjoni Ewropeja (Kap. 319 tal-Ligijiet ta` Malta) fil-fatt jiddisponi, inter alia, illi ebda ksur tal-artikolu 1 tal-Ewwel Protokoll li jsir qabel it-30 ta` April 1987 ma ghandu jaghti lok ghal xi azzjoni taht l-istess att.*
>
> *"Illi jrid jinghad pero` illi t-tfixkil fit-tgawdija tal-possediment tar-rikorrenti huwa stat ta` fatt kontinwu u li ghadu jippersisti sal-lum. Ma jistax jinghad illi r-rikorrenti ghandhom it-tgawdija pacifika tal-fond in kwistjoni u dan peress illi r-rikorrenti llum jinsabu fi ftehim ma` terz inkwilin konsegwenza u naxxenti mill-ordni ta` rekwizizzjoni mahruga mill-Gvern u bl-allokazzjoni tal-fond de quo mill-intimat lill-intervenut fil-kawza, u allura ir-relazzjoni li hemm bejn l-intervenut fil-kawza u r-rikorrenti li zviluppat sallum hija effett tal-istess ordni ta` rekwizizzjoni. Dan l-istat ta` fatt baqa` jippersisti sakemm l-ordni tar-rekwizizzjoni tibqa` fis-sehh u hekk ghadha il-posizzjoni sallum u ghalhekk certament l-effett tal-istess ordni hija ta` natura kontinwa ("**Nazzareno Galea et vs Giuseppe Briffa et**" (A.C. – 16 ta` April 2004). Il-kaz kien ikun differenti f`kaz li att amministrattiv kien jittratta esproprjazzjoni li giet iffinalizzata (Ara f`dan is-sens, **"Louis Manduca vs Il-Prim Ministru et"** (Q.K. - 13 ta` Jannar 1999). F`dan is-sens ukoll, irid jinghad illi l-Onorabbli Qorti Kostituzzjonali qieset esproprjazzjoni illi qatt ma giet iffinalizzata fis-sens illi qatt ma sar l-att ta` akkwist bhala ammontanti ghall-ksur kontinwu*

*tal-possediment pacifiku ("**Pawlu Cachia vs Avukat Generali et**" (Q.K. – 28 ta` Dicembru 2001); "**Andrew Briffa vs Kummissarju tal-Art et**" – P.A. (RCP) – 27 ta` Novembru 2008. F`dan is-sens huwa ta` rilevanza, l-kaz ta` "**Loizidou vs. Turkey**" (ECHR - 15318/89 - 18 ta` Dicembru 1996) fejn il-Qorti Ewropeja qalet illi:-*

"The Court has endorsed the notion of a continuing violation of the Convention and its effects as to temporal limitation of the competence of the Convention organs. Accordingly the present case concerns alleged violations of a continuing nature if the applicant, for the purposes of Art. 1 of Protocol No. 1 and Art. 8 of the Convention can still be regarded as the legal owner of the land".

"Illi f`dan s-sens huma is-sentenzi fl-ismijiet "**Agrotexim Hallas vs Greece**" (19 ta` Frar 1992 u 10 ta` Marzu 1994) u "**Papamichaloupoulis et vs Greece**" (24 ta` Gunju 1993).

*"Illi mhux hekk biss izda iktar relevanti ghall-kaz in ezami huwa dak li gie ritenut fuq dan il-punt fil-kawza fl-ismijiet **"Domenic Mintoff et vs Direttur tal-Akkomodazzjoni Socjali et"** (P.A. (GV) – 28 ta` Marzu 2008) fejn inghad li fejn allegazzjoni li l-kera wara li tkun saret rekwizizzjoni ma tkunx tirrifletti l-valur fis-suq u b`hekk ir-rikorrenti qed igorr piz sproporzjonat bhala effett ta` tali tehid f`dan il-kaz l-artikolu 7 ma japplikax billi l-effetti tar-rekwizizzjoni jipperduraw oltre d-data li fiha harget ir-rekwizizzjoni. Dan proprju jikkombacja mal-kaz odjern, u dan iktar u iktar meta f`din il-kawza ma jidher qatt li tali ordni ta` rekwizizzjoni ghall-fond de quo qatt giet irtirata, u jidher li ghalhekk li ghadha sallum vigenti; dan apparti li l-istess rikors odjern jilmenta dwar in-nuqqas ta` kumpens gust li gie moghti lir-rikorrenti u lill avendi causa tieghu konsegwenti ghall-istess ordni ta` rekwizizzjoni. B`hekk din il-Qorti ma tikkondividiex it-tezi tal-intimat li r-rikorrenti m`ghandhomx azzjoni taht Kap. 319 ghal din ir-raguni u ghalhekk tichad din l-ewwel eccezzjoni tal-intimat ibbazata fuq l-eccezzjoni rationae temporis b`dan li din l-eccezzjoni qed tigi michuda. »*

Il-Qorti taghmel taghha din il-gurisprudenza u sentenzi ohra li jsegwu l-istess linja.

L-eccezzjoni qeghda tkun rigettata.

IX. L-Art 1 Prot 1 tal-Konvenzjoni

Id-disposizzjoni taqra hekk :-

> *Kull persuna naturali jew persuna morali ghandha d-dritt ghat-tgawdija pacifika tal-possedimenti taghha.*
>
> *Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.*
>
> *Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjeta skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.*

i) Gurisprudenza tal-ECHR

Huwa pacifiku li l-Istat ghandu s-setgha u d-dritt li jirregola l-uzu tal-propjeta` fl-interess generali. Madanakollu l-interess tal-privat ghandu jkun tutelat ukoll ghaliex fl-ezercizzju tas-setgha mill-Istat li jikkontrolla l-uzu tal-proprjetà ghandu jkun sodisfatt ir-rekwizit tal-proporzjonalità.

Fis-sentenza **Amato Gauci vs Malta** (15 ta` Settembru 2009 : finali 15 ta` Dicembru 2009) l-ECHR kienet qalet :-

> *56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the*

*protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see **Sporrong and Lönnroth** cited above, §§ 69-74, and **Brumărescu v. Romania** [GC], no. 28342/95, § 78, ECHR 1999-VII).*

*57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50; **Mellacher and Others**, cited above, § 48, and **Spadea and Scalabrino v. Italy**, judgment of 28 September 1995, § 33, Series A no. 315-B).*

*58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. …. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see **Immobiliare Saffi v. Italy**, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and deciding on the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention

standards (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 223)."*

…

"In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant`s state of uncertainty as to whether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property.*

Ta` rilevanza huwa l-pronunzjament tal-ECHR fil-kaz ta` **Cassar vs Malta** deciz fit-30 ta` Jannar 2018 fejn inghad :-

43. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is to say it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights (see, among many other authorities, ***Beyeler v. Italy*** *[GC], no. 33202/96, § 107, ECHR 2000-I, and* ***J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*** *[GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was an interference

44. In connection with the development of property, the Court has previously found that

*having been aware of the fact that their property had been encumbered with restrictions when they had bought it (for example, its designation in a local development plan), the applicants could not hold that circumstance against the authorities (see **Lacz v. Poland**, (dec.) no. 22665/02, 23 June, 2009; and the case-law cited therein), specially when a complaint has not been made that they had a legitimate reason to believe that the restrictions encumbering their property would be removed after they bought the property. However, the Court has not excluded that there might be particular cases where an applicant who bought a property in full knowledge that it was encumbered with restrictions may subsequently complain of an interference with his or her property rights, for example, where the said restrictions are alleged to be unlawful (ibid.).*

*45. More specifically in the context of restrictions on lease agreements (in particular the prohibition on bringing a tenant`s lease to an end), the Court has found that there was an interference as a result of the domestic courts` refusals of the applicants` demands, despite the applicants` knowledge of the applicable restrictions when they had entered into the lease agreement, a matter which however carried decisive weight in the assessment of the proportionality of the measure (see **Almeida Ferreira and Melo Ferreira v. Portugal**, no. 41696/07, §§ 27 and 34, 21 December 2010).*

*46. Subsequently, in **R & L, s.r.o. and Others** (cited above) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective properties their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court did not find it decisive that one of the applicants had purchased the property before the domestic courts had taken*

issue with the legislation in place which had given a legitimate expectation that the status of such properties would be addressed by the national legislator in due course. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid., § 106).

47. In the more recent ***Zammit and Attard Cassar*** *(cited above, § 50) case, in a situation where the applicants` predecessor in title had knowingly entered into a rent agreement in 1971 with relevant restrictions (specifically the inability to increase rent or to terminate the lease), the Court held that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to follow. Moreover, the Court observed that when the applicants had inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which had been to no avail in their circumstances. The decisions of the domestic courts regarding their request had thus constituted interference in their respect. Furthermore, as in* ***R & L, s.r.o. and Others****, in* ***Zammit and Attard Cassar*** *(both cited above) the applicants, who had inherited a property that had already been subject to a lease, had not had the possibility to set the rent themselves (or to freely terminate the agreement). It followed that they could not be said to have waived any rights in that respect. Accordingly, the Court found that the rent-control regulations and their application in that case had constituted an interference with the applicants` right (as landlords) to use their property (****Zammit and Attard Cassar****, cited above, § 51).*

48. Turning to the present case, the Court also notes that the applicants had bought their property

*before the European Court of Human Rights took issue with the Maltese legislation applicable in cases such as **Amato Gauci** (cited above). That judgment was eventually followed in most cases in domestic case-law. However, again the Court finds this not to be decisive given the passage of time between the purchase of the property and now. In this connection the Court reiterates that what might be justified at a specific time might not be justified decades later (see **Amato Gauci**, cited above, § 60). In the present case, while it is true that the applicants knowingly entered into the rent agreement in 1988 with the relevant restrictions (specifically the inability to increase the rent or to terminate the lease), the Court considers that the applicants could not reasonably have foreseen the extent of inflation in property prices in the decades that followed (see **Zammit and Attard Cassar**, cited above, § 50). Once the discrepancy in the rent applied and that on the market became evident, they were unable to do anything more than attempt to use the available remedies, which they did in 2010, but which were to no avail in their circumstances. The decisions of the domestic courts regarding their application thus constituted interference in their respect. Furthermore, the applicants, who bought a property that was already subject to a restricted lease, did not have the possibility to set the rent themselves or to freely terminate the agreement. Clearly, they could not be said to have waived any rights in that connection (see **Zammit and Attard Cassar**, cited above, § 50).*

*49. Accordingly, the Court finds that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property (see **Zammit and Attard Cassar**, cited above, § 51). Nevertheless, in circumstances such as those of the present case a number of considerations need to be made in connection with the proportionality of the interference.*

50. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the

*second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see **Hutten-Czapska v. Poland** [GC], no. 35014/97, §§ 160-61, ECHR 2006-VIII; **Bittó and Others v. Slovakia**, no. 30255/09, § 101, 28 January 2014; and **R & L, s.r.o. and Others**, cited above, § 108).*

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

51. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 53-54).

52. That the interference was lawful has not been disputed by the parties. The Court finds that the restriction arising from the 1979 amendments was imposed by Act XXIII of 1979 and was therefore "lawful" within the meaning of Article 1 of Protocol No. 1.

*53. In the present case the Court can accept that the applicable legislation in the present case pursued a legitimate social-policy aim, specifically the social protection of tenants (see **Amato Gauci**, cited above, § 55, and Anthony Aquilina, cited above, § 57). It is, however, also true that the relevance of that general interest may have decreased over time, particularly after 2008 (see Anthony Aquilina, cited above, § 57), even more so given that following that date, the only person benefiting from the impugned measures was P.G., whose financial situation as shown before the domestic courts and which is not being contested before this Court, leaves little doubt as to P.G`s necessity for such a property, and at a regulated rent. This Court will therefore revert to this matter in its assessment as to the proportionality of the impugned measure.*

(c) Whether the Maltese authorities struck a fair balance

54. The Court refers to its general principles on the matter as set out in Amato Gauci (cited above, § 56-59).

55. The Court will consider the impact that the application of the 1979 Act had on the applicants` property. It notes that the applicants could not exercise their right of use in terms of physical possession as the house was occupied by tenants and they could not terminate the lease. Thus, while the applicants remained the owners of the property they were subjected to a forced landlord-tenant relationship for an indefinite period of time.

*56. Despite any reference to unidentified procedural safeguards by the Government (see paragraph 41 above) the Court has on various occasions found that applicants in such a situation did not have an effective remedy enabling them to evict the tenants either on the basis of their own needs or those of their relatives, or on the basis that the tenants were not deserving of such protection (see **Amato Gauci**, cited above, § 60, and **Anthony Aquilina**, cited above, § 66). Indeed, when their need arose (some years after they had purchased it) and later despite the little need of it by the tenant – who was not in any particular need of housing (at least after 2008) – the applicants were unable to recover the property. Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (see **Anthony Aquilina**, cited above, § 66, and mutatis mutandis, **Zammit and Attard Cassar**, cited above, § 61). The Court further considers that the possibility of the tenant leaving the premises voluntarily was remote, especially since the tenancy could be inherited – as in fact happened in the present case. It is clear that these circumstances inevitably left the applicants in uncertainty as to whether they would ever be able to recover their property.*

57. As to the rent payable, the Court is ready to accept that EUR 466 annually was a more or less reasonable amount of rent in 1988 - particularly given that it was an amount of rent which the

*applicants were aware of and in spite of which they decided to purchase the property with the relevant restrictions. Furthermore, it was an amount of rent which the applicants expected to receive for a number of years, at least until the demise of J.G. and his wife. Moreover, the Court accepts that at the relevant time the measure pursued a legitimate social-policy aim (see paragraph 53 above) which may call for payments of rent at less than the full market value (see **Amato Gauci**, § 77).*

*58. The same cannot be said after the passage of decades, during which the rent had remained the same (as stated by the parties and the domestic courts, the rent is still EUR 466 annually). The Court has previously held that there had been a rise in the standard of living in Malta over the past decades (see **Amato Gauci**, cited above, § 63, and **Anthony Aquilina**, cited above, § 65). Thus, the needs and the general interest which may have existed in 1979 must have decreased over the three decades that ensued (see **Anthony Aquilina**, cited above, § 65). It is noted that as stated by the Government in paragraph 40 above, the minimum wage in 2015 was EUR 720.46 per month, while in 1974 (the date when Malta adopted a national minimum wage) it amounted to the equivalent of less than EUR 100 per month (see **Amato Gauci**, cited above, § 60).*

*59. The Court need not identify the exact year at which the rent payable was no longer reasonable. It observes that cases against Malta concerning the same subject matter, that is to say renewal of leases by operation of law - whose rent had been set on an open market – (see **Amato Gauci, Anthony Aquilina, and Zammit and Attard Cassar**, all cited above), which have invariably lead to findings of a violation of Article 1 of Protocol No. 1, concerned periods after the year 2000. Furthermore, the Government of the respondent State have often argued that Malta suffered a boom in property prices in 2003 (see, for example, **Apap Bologna v. Malta**, no. 46931/12, § 97, 30 August 2016). Lastly, although not determinative, it was only in 2008 that the applicants refused to accept the rent, once P.G. had inherited the property. In the light of the above*

it suffices for the Court to consider that a rent based on the value of the property as it stood in 1962 with the relevant adjustment which amounted to EUR 466 annually in 1988 and thereafter – was certainly not reasonable for the years following 2000.

60. In particular, even if one had to concede that the valuations submitted by the applicants are on the high side, the Court notes that the first-instance domestic court, in 2011, accepted EUR 3,000 per month (that is to say EUR 36,000 per year) as the rental market value of the property (see paragraph 18 above). Thus, the amount of rent received by the applicants, around EUR 39 a month, that is to say EUR 466 per year, for a fourteen-room house in Sliema, a highly sought-after location, is indeed "derisory" as was also found by the first-instance domestic court (see paragraph 18 above). Indeed, that amount of rent contrasts sharply with the market value of the premises in recent years, as accepted by the domestic court or as submitted by the applicant, as it amounted to a little more than 1% of the market value. The Court considers that State control over levels of rent falls into a sphere subject to a wide margin of appreciation by the State and its application may often cause significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable (see ***Amato Gauci****, cited above, § 62).*

61. In the present case, having regard to the low rental payments to which the applicants have been entitled in recent years, the applicants` state of uncertainty as to whether they would ever recover their property, which has already been subject to this regime for nearly three decades, the rise in the standard of living in Malta over the past decades, and the lack of procedural safeguards in the application of the law, which is particularly conspicuous in the present case given the situation of the current tenant as well as the size of the property and the needs of the applicants, the Court finds that a disproportionate and excessive burden was imposed on the applicants. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the

community and the protection of the applicants` right of property.

62. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

Kaz relevanti anke ghaliex ghandu fattispecie simili ghal dawk tal-lum kien dak ta` **Zammit and Attard Cassar v Malta** li kien deciz mill-ECHR fit-30 ta` Lulju 2015.

L-ilment tal-applikanti kien illi r-restrizzjonijiet dwar kera kienu ta` piz eccessiv.

Kien allegat li saret vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni.

Il-kaz kien jittratta dwar kirja ta` fond kummercjali li kienet qed tigi mgedda b`mod awtomatiku skont il-Kap 69.

L-ECHR sabet li kien hemm lezjoni tal-Art 1 Prot 1 tal-Konvenzjoni minkejja l-emendi tal-2009.

Inghad hekk :-

47. The Court reiterates that in order for an interference to be compatible with Article 1 of Protocol No. 1 it must be lawful, be in the general interest and be proportionate, that is, it must strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights (see, among many other authorities, ***Beyeler v. Italy*** *[GC], no. 33202/96, § 107, ECHR 2000-I, and* ***J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom*** *[GC], no. 44302/02, § 75, ECHR 2007-III). The Court will examine these requirements in turn.*

(a) Whether there was interference

48. In previous cases concerning restrictions on lease agreements, the Court considered that there

had been interference (as a result of the domestic courts` refusals of the applicants` demands) despite the applicants` knowledge of the applicable restrictions at the time when they entered into the lease agreement, a matter which however carried weight in the assessment of the proportionality of the measure (see ***Almeida Ferreira and Melo Ferreira v. Portugal****, no. 41696/07, §§ 27 and 34, 21 December 2010).*

49. More recently, in ***R & L, s.r.o. and Others v. the Czech Republic*** *(nos. 37926/05, 25784/09, 36002/09, 44410/09 and 65546/09, 3 July 2014) the Court specifically examined whether Article 1 of Protocol No. 1 protected applicants who had purchased property in the knowledge that rent restrictions imposed on the property might contravene the Convention. In that case, when the applicants had acquired their respective houses their rents had been set in accordance with the rent regulations applicable at the time and the applicants could not have increased the rents above the threshold set by the State. Nor were they free to terminate the rent agreements and conclude new ones with different – higher – levels of rent. The Court held that it could not be said that the applicants as landlords had implicitly waived their right to set the level of rents, as, for the Court, waiving a right necessarily presupposed that it would have been possible to exercise it. There was no waiver of a right in a situation where the person concerned had never had the option of exercising that right and thus could not waive it. It followed that the rent-control regulations had constituted an interference with the landlords` right to use their property (ibid. § 106).*

50. In the present case the Court observes that the applicants` predecessor in title knowingly entered into the rent agreement in 1971. It is the Court`s considered opinion that, at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come. Moreover, the Court observes that when the applicants inherited the property in question they had been unable to do anything more than attempt to use the available remedies, which

were to no avail in their circumstances. The decisions of the domestic courts regarding their request thus constitute interference in their respect. Furthermore, as in ***R & L, s.r.o. and Others*** *(cited above), the applicants in the present case, who inherited a property that was already subject to a lease, did not have the possibility to set the rent themselves (or to freely terminate the agreement). It follows that they could not be said to have waived any right in that respect.*

51. Accordingly, the Court considers that the rent-control regulations and their application in the present case constituted an interference with the applicants` right (as landlords) to use their property.

52. The Court has previously held that rent-control schemes and restrictions on an applicant`s right to terminate a tenant`s lease constitute control of the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1. It follows that the case should be examined under the second paragraph of Article 1 of Protocol No. 1 (see ***Hutten-Czapska v. Poland*** *[GC], no. 35014/97, §§ 160-161, ECHR 2006-VIII,* ***Bittó and Others v. Slovakia****, no.30255/09, § 101, 28 January 2014; and* ***R & L, s.r.o. and Others****, cited above, § 108).*

(b) Whether the Maltese authorities observed the principle of lawfulness and pursued a "legitimate aim in the general interest"

53. The first requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions be lawful. In particular, the second paragraph of Article 1, while recognising that States have the right to control the use of property, subjects their right to the condition that it be exercised by enforcing "laws". Moreover, the principle of lawfulness presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application (see, mutatis mutandis, ***Broniowski v. Poland*** *[GC], no. 31443/96, § 147, ECHR 2004-V, and* ***Amato Gauci,*** *cited above, § 53).*

54. Furthermore, a measure aimed at controlling the use of property can only be justified if it is shown, inter alia, to be "in accordance with the general interest". Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the "general" or "public" interest. The notion of "public" or "general" interest is necessarily extensive. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court has on many occasions declared that it will respect the legislature`s judgment as to what is in the "public" or "general" interest unless that judgment is manifestly without reasonable foundation (see, mutatis mutandis, ***Hutten-Czapska****, cited above, §§ 165-66, and* ***Fleri Soler and Camilleri v. Malta****, no. 35349/05, § 65, ECHR 2006-X).*

55. The Court finds that the restriction was imposed by the Reletting of Urban Property (Regulation) Ordinance and was "lawful" within the meaning of Article 1 of Protocol No. 1. This was not disputed by the parties.

56. As to the legitimate aim pursued, the Government submitted that the measure, as applied to commercial premises, aimed to protect the stability of businesses and the public services such businesses provided. The measure was also aimed at protecting the employment of those persons who depended on the activity of those businesses and safeguarded against property owners taking advantage of the economic activity of a tenant. The Court observes that the Commission has previously accepted that rent regulation to preserve the economic viability of commercial enterprises in the interest of both those enterprises and the consumer, was in the general interest (see ***G v. Austria*** *no. 12484/86, Com. Dec., 7 June 1990). Similarly, the Court can accept that, in principle, the overall measure, which also applied to commercial premises, may be considered as being in the general interest.*

(c) Whether the Maltese authorities struck a fair balance

*57. In each case involving an alleged violation of Article 1 of Protocol No. 1, the Court must ascertain whether by reason of the State`s interference, the person concerned had to bear a disproportionate and excessive burden (see **James and Others**, cited above, § 50, and **Amato Gauci**, cited above, § 57).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. That assessment may involve not only the conditions of the rent received by individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct (see Immobiliare Saffi v. Italy, [GC], no. 22774/93, § 54, ECHR 1999-V, and Broniowski, cited above, § 151).

59. The Court notes, in the first place, that the Government`s final argument (submitted at an advanced stage in the proceedings, see paragraph 46 above) is misconceived in so far as the property they were referring to was not the property at issue in the present case. From the documents and submissions provided to the Court it transpires that the property is in use and thus the applicants were not entitled, on the grounds established by law (Article 12 of Ordinance, paragraph 26 above), to evict the tenant.

60. The Court observes that in the present case the lease was subject to renewal by operation of law

and the applicants had no possibility to evict the tenant on the basis of any of the limited grounds provided for by law. Indeed, any such request before the RRB, in the circumstances obtaining in their case, would have been unsuccessful, despite the fact that the tenant was a commercial enterprise that possessed other property (a matter which has not been disputed), as the latter fact was not a relevant consideration for the application of the law. Furthermore, the applicants were unable to fix the rent – or rather to increase the rent previously established by their predecessor in title. The Court notes that, generally, increases in rent could be done through the RRB. They were, however, subject to capping, in that any increase could not go beyond 40% of the fair rent at which the premises were or could have been leased before August 1914. Indeed, in the applicants` case no increase was possible at all, because the rent originally fixed in 1971 was already beyond the capping threshold.

61. Whereas the RRB could have constituted a relevant procedural safeguard by overseeing the operation of the system, in the present case it was devoid of any useful effect, given the limitations imposed by the law (see, mutatis mutandis, see ***Amato Gauci****, cited above, § 62 and* ***Anthony Aquilina v. Malta****, no. 3851/12, § 66, 11 December 2014). Consequently, the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners (ibid and, mutatis mutandis,* ***Statileo v. Croatia****, no. 12027/10, § 128, 10 July 2014).*

62. The Court further notes that for the first decade of the rental contract, during which – according to the applicants – the market value of the property was EUR 7,000, the rent payable to the applicants was EUR 862 a year. Subsequently, for the year 2010 the rent amounted to EUR 990, for 2011 EUR 1,138, for 2012 EUR 1,309 and for 2013 EUR 1,505. For the years 2014 onwards it would increase by 5% a year. The Court reiterates that State control over levels of rent falls into a sphere that is subject to a wide margin of appreciation by the State, and its application may often cause

*significant reductions in the amount of rent chargeable. Nevertheless, this may not lead to results which are manifestly unreasonable, such as amounts of rent allowing only a minimal profit (see **Amato Gauci**, cited above, § 62). While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as submitted by the applicants, which was not effectively contested by the Government. However, the applicants have not argued that they were unable to make any profit. Even so, this element must be balanced against the interests at play in the present case.*

63. While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded. The Government have not argued that in the present case the viability of the tenant`s commercial enterprise was in any way dependent on the favourable conditions of the lease on the premises used for storage – a matter which was irrelevant in the application of the law to the premises. In such circumstances, both States and the Court in its supervisory role must be vigilant to ensure that measures such as the one at issue, applied automatically, do not give rise to an imbalance that imposes an excessive burden on landlords while allowing tenants of commercial property to make inflated profits. It is also in such contexts that effective procedural safeguards become indispensable.

*64. Lastly, the Court notes that unlike in other rent-control cases where the applicants were in a position of uncertainty as to when and if they would recover their property (see, inter alia, **Amato Gauci**, cited above, § 61, and **Saliba and Others v. Malta**, no. 20287/10, § 67, 22 November 2011), in the present case, under the laws currently in force and in the absence of any further legislative interventions, the applicants` property will be free and unencumbered as of 2028. It follows that the effects of such rent regulation are circumscribed in*

time. However, the Court cannot ignore the fact that by that time, the restriction on the applicants` rights would have been in force for nearly three decades, and to date has been in force for over a decade.

65. Having assessed all the elements above, and notwithstanding the margin of appreciation allowed to a State in choosing the form and deciding on the extent of control over the use of property in such cases, the Court finds that, having regard to the relatively low rental value of the premises and the lack of procedural safeguards in the application of the law, a disproportionate and excessive burden was imposed on the applicants, who have had to bear a significant part of the social and financial costs of supporting a commercial enterprise. It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicants` right to the enjoyment of their property.

66. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

ii) <u>Gurisprudenza tal-Qrati Maltin</u>

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, diversi kienu d-decizjonijiet tal-Qrati taghna li kienu jittrattaw kazi li kienu jinvolvu disposizzjonijiet tal-Kap 158 fejn kienet dikjarata vjolazzjoni tal-Art 1 Prot 1. Naturalment kienu decizjonijiet li jirrigwardaw residenzi mhux fondi kummercjali.

Qeghda tirreferi *inter alia* ghal : **<u>Dr. Cedric Mifsud et vs l-Avukat Generali et</u>** deciza mill-QK fil-25 ta` Ottubru 2013 ; **<u>Angela sive` Gina Balzan vs L-Onorevoli Prim Ministru et</u>** deciza mill-QK fis-7 ta` Dicembru 2012 ; **<u>AIC Joseph Barbara et vs L-Onor Prim Ministru et</u>** deciza 31 ta` Jannar 2014 ; **<u>Maria Ludgarda Borg et vs Rosario Mifsud et</u>** deciza mill-QK fid-29 ta` April 2016 ; **<u>Concetta sive` Connie Cini vs Eleonora Galea et</u>** deciza mill-QK fil-31 ta` Jannar 2014 ; **<u>Robert Galea vs Avukat Generali et</u>** deciza mill-PA/GK fis-7 ta` Frar 2017 ; **<u>Rose Borg vs Avukat Generali et</u>** deciza mill-QK fil-11 ta` Lulju 2016 ; id-diversi kawzi bl-*occhio* **<u>Josephine Azzopardi et vs L-Onor Prim Ministru et</u>** li kienu decizi fil-25 ta` April 2018 ; **<u>Sergio Falzon et vs Alfred Farrugia et</u>** deciza fit-30 ta` Jannar 2018.

Dak li nghad f` din il-gurisprudenza, huwa ta` siwi ghall-kaz tal-lum.

It-thaddim tal-Art 1 Prot 1 jigma` fih tliet principji : illi ghandu jkun hemm it-tgawdija pacifika tal-proprjeta` ; illi l-privazzjoni minn possedimenti hija soggetta ghal kondizzjonijiet ; u li l-Istat ghandu l-jedd illi jikkontrolla l-uzu tal-proprjeta` konformement mal-interess generali. It-tliet principji ghalkemm distinti mhumiex disgunti, peress illi l-ahhar tnejn jittrattaw sitwazzjonijiet partikolari ta` indhil fid-dritt ghall-godiment pacifiku tal-proprjeta` u ghalhekk iridu jinftehmu fid-dawl tal-principju generali espost fl-ewwel principju.

Kwalsiasi interferenza trid tkun kompatibbli mal-principji ta` (i) l-legalita`, (ii) ghan legittimu fl-interess generali, u (iii) bilanc gust. Irid jinzamm proporzjon ragjonevoli bejn il-mezzi uzati u l-ghan persegwit bil-mezzi uzati mill-Istat sabiex jikkontrolla l-uzu tal-proprjeta` tal-individwu. Din il-proporzjon issib r-*raison d`etre* tieghu fil-principju tal-"bilanc xieraq" li ghandu jinzamm bejn l-esigenzi tal-interess generali tal-komunita` u l-htiega tal-harsien tad-drittijiet fundamentali tal-individwu. Il-Qorti tkun trid taghmel analizi komprensiva tal-varji interessi, u taccerta ruhha jekk bhala konsegwenza tal-indhil mill-Istat l-persuna kellhiex iggarrab piz eccessiv u sproporzjonat.

iii) <u>Risultanzi</u>

Il-Qorti tqis li fil-kaz tal-lum id-disposizzjonijiet dwar it-tigdid awtomatiku tal-kera u dwar il-kontroll tal-ammont tal-kera ghandhom l-iskop li jikkontrollaw l-uzu tal-proprjeta`. Il-modalita` tat-tigdid tal-kera, u l-kontroll ta` l-ammont ta` l-kera li tista` tintalab jikkostitwixxu forma ta` interferenza fl-uzu tal-proprjeta`. Issa dak li din il-Qorti trid taccerta ruhha huwa jekk inzammx bilanc gust u proporzjonat bejn l-ghan socjali ntiz biex jestendi harsien tal-vijabbilita` ekonomika ta` intraprizi kummercjali mal-bzonn li jigu rispettati d-drittijiet tas-sidien ghat-tgawdija tal-possedimenti taghhom.

a) <u>Tigdid tal-kirja *ope legis*</u>

Jirrizulta illi l-kirja tal-fond de quo, li huwa kummercjali, kienet imgedda *ope legis* b`mod u manjiera illi s-sid kien kostrett *a suo malgrado* li joqghod ghal dak ir-regim ta` dritt certament sfavorevoli ghalih.

b) <u>Kera baxxa</u>

Il-*quantum* tal-kera li r-rikorrent, bhala s-sid, seta` jippercepixxi ghal dak il-fond, meta paragunat mal-kera oggettivament ricevibbli fis-suq hieles hija baxxa u nsinjifikanti.

Mhuwiex sostenibbli **<u>ghall-fini ta` dan il-procediment</u>** dak eccepit mill-intimat Flores pro et noe fis-sitt eccezzjoni fejn sostna li l-kera prezenti kienet awmentata wara ftehim li kien sar bejn is-sidien u l-inkwilin ta` dak iz-zmien, ftehim li kien ikkonfermat b`decizjoni tal-Bord li Jirregola l-Kera.

Id-decizjoni tal-Bord kellha tittiehed kif ittiehdet ghaliex kien vigenti regim negozjali restrittiv bejn is-sid u l-inkwilin.

Il-*quantum* tal-kera jibqa` baxx u bla dubju ta` pregudizzju ghad-drittijiet tas-sid.

c) <u>Bdil ghall-ahjar fil-qaghda ekonomika tal-pajjiz</u>

Ghalkemm ir-*ratio legis* wara d-disposizzjonijiet tal-Kap 69 kien illi tkun ippreservata b`intervent legislattiv mirat il-vijabbilita` ekonomika ta` l-azjendi kummercjali, ma hemmx l-icken dubju li l-qaghda ekonomika u finanzjarja tal-pajjiz illum toffri xejriet lejn il-posittiv u mhijiex dik li kienet fiz-zmien meta sari l-Kap 69.

d) <u>L-accettazzjoni tal-kera</u>

Irrizulta li kien hemm zmien meta l-kera kienet tigi accettata mill-awturi fit-titolu tar-rikorrent.

Fl-istess waqt dan il-fatt ma jikkostitwixxix xi rinunzja ghad-drittijiet tar-rikorrent li jipproponi l-azzjoni odjerna, kontra dak li kien eccepit mill-intimat Karl Flores pro et noe fis-seba` eccezzjoni, u li allura din il-Qorti qeghda tirrespingi.

Mhijiex sostenibbli d-difiza li tghid li l-awturi fit-titolu tar-rikorrenti kienu jaccettaw il-kera u b`hekk huma rratifikaw kull ma gara, ghaliex il-fatt innifsu li kienet accettata kera ma jammontax ghal rinunzja jew ghal ostakolu biex jittiehdu proceduri ta` din ix-xorta. Huwa evidenti li l-awturi tar-rikorrenti accettaw il-hlas tal-kera fil-kuntest ta` regim legali partikolari li ma kienx jaghtihom triq ohra ghajr dik. Is-sid ma kellux alternattiva ohra ghajr li jbaxxi rasu.

(ara : QK : **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** : 29 ta` April 2016)

e) Nuqqas ta` talba biex tizdied il-kera

L-Avukat Generali jghid li ghandu jitqies il-fatt illi ghaz-zmien kollu tal-kirja, ir-rikorrent u l-awturi tieghu la qatt baghtu ittra ufficjali skont l-Art 3 tal-Att I tal-1925 biex ikun hemm awment fil-kera u lanqas qatt ma talbu ghal awment fil-kera quddiem il-Bord li Jirregola l-kera skont l-Art 4 tal-Kap 69.

Fil-fehma ta` din il-Qorti, l-argument ma jregix fil-kuntest ta` procediment tax-xorta li huwa dan tal-lum.

Anke li kieku ntalab awment fil-kera, il-ligi ma kinitx tipprovdi ghal kondizzjonijiet biex eventwali awment ikun tassew reali u gust.

Ghalhekk ir-rikorrent u l-awturi tieghu ma kellhomx rimedji effettivi.

f) Zieda fil-kera

Tajjeb jinghad illi bl-emendi li dahlu bl-Att X tal-2009, ghad li kien hemm awment fil-kera, dan l-awment xorta wahda ma jirriflettix fl-ghadd ir-realta` ekonomika u socjali tal-pajjiz.

Wara l-1 ta` Gunju 2013, is-sid thalla b` idejh marbuta dwar b`kemm ghandha tizdied il-kera peress li fin-nuqqas ta` ftehim mal-inkwilin, il-ligi baqghet tiddetta kif ghandha tigi awmentata l-kera.

L-Art 1531D tal-Kap 16 ighid :-

> *(1) Il-kera ta` fond kummercjali, fin-nuqqas ta` ftehimmod iehor milhuq wara l-1 ta` Jannar, 2010 jew ta` ftehim bil-miktub li jkun sar qabel l-1 ta` Gunju, 1995 dwar kirja li tkunghadha fil-perjodu originali taghha fl-1 ta` Jannar, 2010, ghandumid-data tal-ewwel hlas tal-kera dovut wara l-1 ta` Jannar 2010, jigi mizjud b`rata fissa ta` hmistax fil-mija fuq il-kera attwali ujibqa` jigi mizjud mid-data tal-ewwel hlas tal-kera dovut wara l-1ta` Jannar ta` kull sena bi hmistax fil-mija fuq l-ahhar kera bejn l-1ta` Jannar, 2010 u l-31 ta` Dicembru, 2013.*
>
> *(2) Il-kera mid-data tal-ewwel hlas tal-kera dovut wara l-1 ta`Jannar, 2014, ghandu jigi stabbilit bi qbil bejn il-partijiet. Fin-nuqqas ta` qbil, ghandu jittiehed bhala gwida ghall-kera l-Indicital-Valur Kummercjali tal-Proprjetà kif jista jigi stabbilitb`regolamenti maghmulin mill-Ministru responsabbli ghall-akkomodazzjoni u fin-nuqqas ta` regolamenti, il-kera ghandu mill-ewwel hlas tal-kera dovut wara l-1 ta` Jannar, 2014, joghla b`hamsafil-mija fis-sena sad-dhul fis-sehh tal-imsemmija regolamenti.*
>
> *(3) Fil-kaz ta` fond kummercjali, jekk kien hemm ftehim ghalzjidiet perjodici bejn il-partijiet, dan il-ftehim ghandu jibqa`japplika minghajr iz-zjidiet kontemplati f`dan il-artikolu :*
>
> *Izda, barra mill-kazijiet fejn iz-zjieda fil-kera jkun sar biqbil, fejn tigi applikata z-zjieda kif proposta hawn qabel ghal fondikummercjali, l-inkwilin jista` permezz ta` ittra ufficjali mibghutalil sid il-kera jew lil wiehed minn sidien il-kera, jittermina l-kirjabilli jaghti pre-avviz ta` tliet xhur u dan ukoll jekk il-kirja tkun ghal zmien definit.*

Fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) l-ECHR irrimarkat :-

"*While the applicants do not have an absolute right to obtain rent at market value, the Court observes that, despite the 2009 amendments, the amount of rent is significantly lower than the market value of the premises as*

submitted by the applicants, which was not effectively contested by the Government. …While the Court has accepted above that the overall measure was, in principle, in the general interest, the fact that there also exists an underlying private interest of a commercial nature cannot be disregarded."

Ghalhekk it-tmien eccezzjoni ta` l-Avukat Generali qeghda tkun respinta.

g) <u>Iz-zmien meta tintemm kirja kummercjali</u>

Minkejja l-introduzzjoni tal-emendi bl-Att X ta` l-2009 fejn dawn jittrattaw iz-zmien meta jintemmu kirja kummercjali, xorta wahda s-sid jibqa` mghobbi b`*disproportionate and excessive burden.*

L-ghaxar eccezzjoni ta` l-intimat Flores pro et noe u d-disa` eccezzjoni ta` l-Avukat Generali mhux se jkunu milqugha.

Il-Qorti terga` tirreferi ghad-decizjoni tal-ECHR fil-kaz ta` **<u>Zammit and Attard Cassar v Malta</u>** (op. cit.) fejn inghad hekk :-

> *… under the laws currently in force and in the absence of any further legislative interventions, the applicants` property will be free and unencumbered as of 2028. It follows that the effects of such rent regulation are circumscribed in time. However, the Court cannot ignore the fact that by that time, the restriction on the applicants` rights would have been in force for nearly three decades, and to date has been in force for over a decade.*

h) <u>Il-kera kif stabbilita mill-awturi tar-rikorrent</u>

Il-Qorti <u>tirrespingi</u> l-eccezzjonijiet li jghidu li l-ghadd tal-kera u l-kundizzjonijiet tal-kirja kienu determinati mill-awturi tar-rikorrent, u li ghalhekk meta kienet iffissata l-kera, l-awtur tar-rikorrent kien jaf b` kemm kien ha jkun il-valur tal-kera wara l-gheluq originali (ossija s-seba` eccezzjoni ta` l-Avukat Generali) u li s-sidien setghu jinnegozjaw mekkanizmu ta` revizjoni tal-kera (ossija it-tmien eccezzjoni ta` Flores pro et noe).

Din il-Qorti tghid illi kienu x`kienu c-cirkostanzi tal-kaz, meta s-sidien ikkoncedew il-fond b`titolu ta` kera, minkejja li kienu konsapevoli li seta` jkun hemm tigdid awtomatiku tal-kirja, b`daqshekk ma jfissirx illi bit-thaddim tal-ligi llum mhux qeghdin isofru lezjoni tad-drittijiet taghhom.

Is-sidien ma setghu qatt jipprevedu *a tempo debito* kif kien ser jinbidel is-suq kummercjali jew li l-ligi kienet ser tithalla b`mod li l-quantum tal-kera kien ser jibqa` kkontrollat.

Din il-Qorti tasal ghall-konkluzjoni li s-sidien ma setghu qatt jipprevedu l-piz li ser jibqghu jgorru ghall-ghexieren ta` snin u li se jibqghu jgorru jekk din il-Qorti tichad it-talbiet taghhom sempliciment ghaliex huma kienu konsapevoli x`kienet tghid il-ligi meta kkoncedew il-fond b`kera.

Dan hu in linea ma` dak li kien deciz mill-ECHR fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.) u cioe` *"at the time, the applicants` predecessor in title could not reasonably have had a clear idea of the extent of inflation in property prices in the decades to come..." (para 50).*

Fid-dawl ta` l-premess, il-Qorti teskludi li fir-realta` tal-fatti u cirkostanzi taz-zmien l-awturi fit-titolu tar-rikorrent kienu, volontarjament u konsapevolment, accettaw li jissottomettu ruhhom ghal tali piz eccessiv u sporporzjonat li ilu tant snin jipperdura.

iv) Konkluzjoni

Il-Qorti hija tal-fehma konsiderata illi tenut kont tal-fatti u cirkostanzi tal-kaz tal-lum kif evolvew mal-medda tas-snin sal-lum il-piz li kellu jgorr is-sid kien sproporzjonat u eccessiv. Ir-rikorrent kien imcahhad mit-tgawdija tal-proprjeta` tieghu bla ma nghata kumpens xieraq ghat-tehid tal-pussess ta` l-fond li garrab.

Il-Qorti sejra tichad is-sitt (6), is-seba` (7), it-tmien (8), id-disa` (9) u l-ghaxar (10) eccezzjonijiet ta` Karl Flores pro et noe, kif ukoll ir-raba` (4), il-hames (5), is-sitt (6), is-seba` (7), it-tmien (8), id-disa` (9) u l-ghaxar (10) eccezzjonijiet tal- Avukat Generali.

Il-Qorti sejra tilqa` l-ewwel talba tar-rikorrent safejn din tirrigwarda vjolazzjoni kontra r-rikorrent ta` l-Art 1 Prot 1 tal-Konvenzjoni.

X. Ir-rimedju skont it-tieni talba

Fil-hdax l-eccezzjoni, Karl Flores pro et noe jishaq illi tkun xi tkun l-eventwali decizjoni ta` din il-Qorti, huma m`ghandhomx jigu zgumbrati mill-fond de quo ; lanqas m`ghandhom jigu ppregudikati finanzjarjament billi huma ma kissru l-ebda ligi izda sempliciment avvallaw ruhhom minn ligi li ghadha fis-sehh.

Kompla jinghad illi l-fond de quo huwa hanut mnejn huwa derivat l-ghejxien tal-intimat Flores u ta` familjari tieghu.

Inoltre l-accertament tal-*hardship* ghandu jikkomprendi wkoll ezami shih tal-assi tar-rikorrent, mhux biss tal-proprjeta` mertu tal-kawza mehuda wahedha.

a) Il-pussess effettiv tal-fond de quo

Ir-rikorrent qed jitlob li jinghata l-pussess effett tal-fond 296, Triq ir-Repubblika, Valletta, li fis-sostanza jfisser l-izgumbrament tal-intimat Flores pro et noe mill-fond.

Il-Qorti tirreferi ghad-decizjoni li tat il-Qorti tal-Appell fl-24 ta` April 2015 fil-kawza fl-ismijiet **Michael Angelo Briffa et vs Nadia Merten** fejn inghad hekk :-

> *" ... illi l-art. 6 tal-Kostituzzjoni jghid car illi "jekk xi ligi ohra tkun inkonsistenti ma` din il-Kostituzzjoni, ... il-ligi l-ohra ghandha, safejn tkun inkonsistenti, tkun bla effett". Il-qorti ghalhekk, jekk issib ksur tal-Kostituzzjoni, ma tistax thalli illi, bis-sahha tal-art. 12(4) tal-Kap. 158, issir il-konverzjoni tac-cens ghax jekk taghmel hekk tkun qieghda thalli li jinghata effett lil ligi wkoll safejn tkun inkonsistenti mal-Kostituzzjoni (Ara Cedric Mifsud et noe v. Avukat Generali u Carmelo Camilleri, Kost. 31 ta` Jannar 2014). Ir-*

rimedju ghalhekk jista` jkun biss illi l-qorti taqta` l-kawza bhallikieku l-art. 12(4) ma ghandu ebda effett, i.e. billi ma thallix illi ssehh il-konverzjoni, bil-konsegwenza illi l-konvenuta tibqa` bla titolu.

16. Lanqas ma huwa relevanti l-fatt illi r-rimedju moghti mill-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz ta` Amato Gauci kien il-kundanna tal-gvern li jhallas id-danni u mhux il-kundanna tal-kerrej ghal zgumbrament. Qabel xejn kawzi quddiem il-Qorti Ewropea jsiru kontra l-istat u mhux kontra cittadini privati: il-kerrej, li ma kienx parti fil-kawza, ma setax jigi kundannat li jizgombra. Barra minn hekk, ir-rimedju li tista` taghti dik il-qorti huwa biss kontra l-istat: ma ghandha ebda setgha tordna zgumbrament ta` cittadini privati. Ukoll, dik il-qorti tista` biss tghid illi irravvizat ksur ta` xi disposizzjoni tal-Konvenzjoni ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali izda ma ghandha ebda setgha li tghid illi l-ligi domestika "tkun bla effett"."

Fis-sentenza fil-kawza fl-ismijiet **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** (op. cit.) inghad hekk mill-Ewwel Qorti :-

" ... fost ir-rimedji li qieghda titolob l-attrici ghal dan il-ksur hemm dak tal-izgumbrament tal-konvenuti Bajada mill-fond. Din il-qorti ma tarax illi huwa kompitu taghha fil-kompetenza kostituzzjonali li taghti ordni ta` zgumbrament, ukoll ghax ma giex, u ma setax jigi, dibattut quddiemha jekk il-konvenuti Bajada ghandhomx xi titolu iehor biex izommu l-fond. Jidher ukoll illi hemm kawza ohra pendenti bejn l-attrici u l-kerrejja (rikors mahluf numru 288/2007) fejn tigi dibattuta l-kwistjoni tal-izgumbrament. Ghall-ghanijiet ta` din il-kawza tal-lum huwa bizzejjed li jinghad illi l-konvenuti Bajada ma jistghux jinqdew bl-art. 12A tal-Kap. 158 biex jilqghu ghal kull azzjoni li ghamlet jew tista` taghmel l-attrici fil-forum kompetenti biex tikseb l-izgumbrament taghhom."

Fid-decizjoni taghha, il-Qorti Kostituzzjonali qalet :-

> *"Dwar x`ghandu jkun ir-rimedju, l-ewwel Qorti pprovdiet billi qalet illi l-intimati Bajada ma jkunux jistghu jinqdew bl-Artikolu 12A tal-Kap. 158 biex jilqghu ghal kull azzjoni li tista` taghmel ir-rikorrenti fil-forum kompetenti biex tikseb l-izgumbrament taghhom. Din il-Qorti, wara li hasbet fit-tul fuq din il-materja, tara li dan mhux rimedju li tista` taghti.*
>
> *Il-bilanc bejn l-interessi differenti jrid joholqu l-Gvern, u hu l-Gvern li jrid ibati l-konsegwenzi jekk jonqos minn dan id-dmir tieghu. Ghan-nuqqas tal-Gvern ma ghandux ibati ccittadin. La darba, f`dan il-kaz, il-ligi per se ma gietx meqjusa li tikser il-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem, ma tistax tigi dizapplikata ghall-kaz. Din il-Qorti gia` osservat f`kuntest iehor li meta jkun hemm ordni ta` rekwizizzjoni u l-Gvern iqieghed persuna ohra in situ b`kera li titqies baxxa, ir-rimedju mhux li tithassar dik l-ordni ta` rekwizizzjoni izda li jinghata kumpens adegwat bhala just satisfaction u dan talli ma nholoqx bilanc gust bejn l-interessi involuti. F`dawn ic-cirkostanzi, ma tkunx l-ordni ta` rekwizizzjoni nnifisha li tkun kisret id-dritt ta` proprjeta` tas-sid, izda l-mekkanizmu ta` kumpens (ara Montanaro Gauci v. Direttur Akkomodazzjoni Socjali et, deciza minn din il-Qorti fil-25 ta` Novembru 2011). Anke l-kaz meritu ta` din il-kawza m`huwhiex il-passi li ha l-Gvern fl-interess generali li huma hziena izda l-mekkanizmu li holoq biex jigi determinat l-applikazzjoni tal-ligi u l-quantum tal-kumpens. Ghalhekk, anke f`dan il-kaz, ir-rimedju ghandu jkun ta` kumpens, kif del resto jipprovdi l-Artikolu 41 ta` Konvenzjoni Ewropeja, l-uniku ligi li nstab li gie miksur.*
>
> *Din il-Qorti ma tistax taghti ordni li twassal, wisq probabbli, ghat-tkeccija tal-konjugi Bajada mill-fond inkwistjoni, meta l-protezzjoni nfisha, moghtija lilhom mill-Gvern, mhux leziva ghad-drittijiet tas-sid. Veru li jista jinghad li, f`dan il-kaz, il-konjugi Bajada ma haqqhomx jibqghu fil-post la darba ghandhom proprjeta` immobbli ohra, pero`, ghal dan ma hasibx il-Legislatur, u ma*

jahtux il-konjugi Bajada li jippruvaw jiehdu vantagg mil-ligi kif inhi.

Kif osservat il-Qorti Ewropeja tal-Gustizzja fil-kaz ta` Amato Gauci, aktar qabel imsemmi, meta l-ligi ma tipprovdix li s-sid ikun jista` jikkontesta d-dritt tal-enfitewta li juzufriwixxi ruhu bil-beneficcji li taghtih il-ligi "on the basis that they were not deserving of such protection, as they owned alternative accomodation", ir-rizultat ikun li "the application of the law itself lacked adequate procedural safeguards aimed at achieving a balance between the interests of the tenants and those of the owners". Kwindi, il-ligi ghandha titqies applikabbli ghall-kaz, izda peress li fl-istess ligi jezistu nuqqasijiet procedurali biex jinholoq bilanc gust, irid jinghata kumpens adegwat lis-sid halli "jinholoq" dan il-bilanc."

[ara wkoll : is-sentenzi : QK : **Dr. Cedric Mifsud et vs. L-Avukat Generali et** (op. cit.) ; QK : **Cassar Torreggiani vs Avukat Generali et** (op. cit.) ; QK : **Victor Portanier et vs Avukat Generali et** (op. cit.) ; QK : **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** (op. cit.) PA/GK : **Robert Galea vs Avukat Generali et** (op. cit.) ; u **Rose Borg vs Avukat Generali et** (op. cit.)]

Fid-decizjoni tal-ECHR tat-22 ta` Frar 2012 dwar *just satisfaction* fil-kaz ta` **Frendo Randon and Others v. Malta**, inghad :-

16. As the Court has held on a number of occasions, a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see Iatridis v. Greece (just satisfaction) [GC}, no. 31107/96 §32, ECHR 2000-XI, and Guiso- Gallissay v. Italy Just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009). The Contracting States that are parties to a case are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the

Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of restitutio in integrum it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If; however, national law does not allow - or allows only partial reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate."

Issir referenza wkoll ghad-decizjoni tal-ECHR tat-12 ta` Gunju 2012 fil-kaz ta` **Lindheim and Others v. Norway** fejn inghad :-

"Whilst in reaching the above conclusion the Court has focused on the particular circumstances of the applicants` individual complaints, it adds by way of a general observation that the problem underlying the violation of Article 1 of Protocol No. 1 concerns the legislation itself and that its findings extend beyond the sole interests of the applicants in the instant case. This is a case where the Court considers that the respondent State should take appropriate legislative and/or other general measures to secure in its domestic legal order a mechanism which will ensure a fair balance between the interests of lessors on the one hand, and the general interests of the community on the other hand, in accordance with the principles of protection of property rights under the Convention."

Bla hsara ghall-kuntest ta` dritt fejn kienet ippronunzjata l-gurisprudenza fuq riferita, din il-Qorti tafferma li din il-gurisprudenza tghodd ukoll *mutatis mutandis* ghal-legislazzjoni mertu tal-kawza odjerna.

Il-Qorti tghid ukoll illi procediment ta` x-xorta tal-lum mhuwiex il-forum appozitu sabiex tinghata decizjoni dwar jekk inkwilin ghandux jigi zgumbrat jew le. Huma t-tribunali jew qrati ordinarji li ghandhom il-kompetenza li jesprimu ruhhom dwar talba ghal zgumbrament. Ghall-fini tal-procediment odjern, dik rilevanti hija l-konsiderazzjoni ta` jekk ligi tkunx ivvjolat il-jeddijiet fondamentali tal-persuna u allura jekk abbazi rtal-fattispeci ta` kull kaz dik il-ligi ghandhiex tkun applikata bejn il-partijiet

kemm-il darba l-applikazzjoni taghha tkun leziva ghad-drittijiet fundamentali ta` l-persuna koncernata.

Riferibbilment ghall-kaz tal-lum, jirrizulta li ladarba Flores agixxew skont il-ligijiet vigenti m`ghandhomx legalment jirrispondu ghall-kostituzzjonalita` ommeno tal-ligi kif applikata, jew li jkunu ordnati jaghtu rimedju lir-rikorrent jew jehlu l-ispejjez tal-kawza.

Il-promulgazzjoni ta` ligi hija mir-responsabilita` tal-Istat rapprezentat fil-procediment tal-lum mill-Avukat Generali. Ic-cittadin josserva l-ligi u meta jonqos ikollu jgarrab il-mkonsegwenzi. Jekk jirrizulta li ligi tkun kisret il-jeddijiet fondamentali tal-persuna, huwa l-Istat mhux ic-cittadin li ghandu jirrispondi.

b) <u>It-talba ghall-ghoti ta` kumpens</u>

Il-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghal danni civili li jigu likwidati mill-qrati ordinarji.

(ara : QK : **<u>Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et</u>** deciza fis-17 ta` Dicembru 2010 ; **<u>Victor Gatt et vs Avukat Generali et</u>** deciza fil-5 ta` Lulju 2011 ; u **<u>Ian Peter Ellis et vs Avukat Generali et</u>** deciza fl-24 ta` Gunju 2016).

Huma diversi l-konsiderazzjonijiet li ghandhom isiru sabiex ikun determinat il-*quantum* tal-kumpens.

Decizjoni li kkunsidrat fid-dettall din il-kwistjoni kienet dik illi tat il-Qorti Kostituzzjonali fil-kawza **<u>Raymond Cassar Torregiani et vs Avukat Generali et</u>** deciza fid-29 ta` April 2016.

Il-Qorti qalet hekk :-

> "*Dwar il-quantum tal-kumpens dovut issir referenza ghas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et V Kummissarju tal-Artijiet et*** *deciza fil-31 ta` Ottubru 2014, fejn f`materja ta` komputazzjoni ta` kumpens ghal lezjoni ta` dritt fondamentali sancit fl-artikolu konvenzjonali fuq citat gie osservat :*

"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Barra minn hekk, jekk il-Qorti Ewropeja hasset li f` certi kazijiet kellha taghti kumpens f` ammont inferjuri ghal dak li nghata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija taghhom b` mod li bilfors kumpens li jinghata ikun f`ammont vicin dak li taghti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti hadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens xieraq li ghandha taghti f` dan il-kaz ikun fl-ammont ta` hamsa u ghoxrin elf Euro (EUR 25,000). Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jiehdu l-proceduri opportuni, il-valur tal-immobbli, iz-zmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` taghhom minghand ma nghata ebda kumpens, l-istat tal-fond u l-ezistenza tal-fattur tal-interess pubbliku. Ma` dawn ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."

Issa ghalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` lezjoni tad-drittijiet fondamentali ma jekwiparax necessarjament ma` likwidazzjoni ta` danni civili attwali sofferti, ma jfissirx li d-danni materjali ghandhom jigu injorati ghall-finijiet tal-ezercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti ghall-kaz odjern sabiex tasal ghad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jigi percepit ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` dan il-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandha tinghata konsiderazzjoni ghall-fatt illi l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku (ghall-fini ta` quantum ta` kumpens u relattiva motivazzjoni, ara dawn id-decizjonijiet li jirreferu wkoll ghall-pronunzjamenti tal-ECHR :- QK : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru** : op. cit. ; **Dr. Cedric Mifsud et vs l-Avukat Generali et** : op. cit. ; **Concetta sive Connie Cini vs Eleonora Galea et** : op. cit. ; **Robert Galea vs Avukat Generali et** : PA/GK : op cit ; **Sergio Falzon et vs Alfred Farrugia et** : PA/GK : op. cit. ; PA/GK : 15 ta` Frar 2018 : **Alessandra Radmilli vs Joseph Ellul et** ; PA/GK : 2 ta` Marzu 2018 : **Thomas Cauchi et vs Avukat Generali et**) [ara wkoll ghall-istess skop : ECHR : 30 ta` Jannar 2018 : **Cassar vs Malta** : Application 50570/13]

Il-Qorti tqis illi l-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw il-lezjoni kostituzzjonali jew konvenzjonali.

Il-Qorti sabet illi kien hemm vjolazzjoni tad-drittijiet fundamentali tar-rikorrent skont l-Art 1 Prot 1 tal-Konvenzjoni.

Ghalkemm id-diskrepanza bejn il-kera attwalment percepita u l-valur lokatizju li l-fond de quo jgib fis-suq hieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-principju tal-proporzjonalita`, fl-istess waqt tajjeb jinghad illi fil-komputazzjoni tal-kumpens hemm fatturi ohra li wkoll ghandhom rilevanza, u li flimkien ghandhom iwasslu ghall-ghoti ta` kumpens gust ghal-lezjoni subita.

Dawn il-fatturi huma :-

a) L-ghan socjali tal-mizura legislattiva.

b) L-isproporzjon rifless fid-differenza bejn il-kera percepita u dik li setghet tkun percepita fis-suq hieles li kieku ma kenitx imposta l-lokazzjoni *ope legis.*

c) Il-fatt li *ex lege* fadal sal-2028 sabiex il-fond imur lura ghand ir-rikorrent.

d) It-tul ta` zmien li dam ir-rikorrent ibati minn nuqqas ta` proporzjonalita`, tenut kont ukoll taz-zmien li thalla mir-rikorrent sabiex jistitwixxi l-procediment taal-lum.

Il-Qorti tifhem li l-inizjattiva legislattiva kienet saret fl-interess generali.

Tifhem ukoll illi l-awtur tar-rikorrenti fil-mument tal-koncessjoni tal-kirja kummercjali ma kienx u ma setax ikun jaf il-futur senjatament ix-xejriet ekonomici pajjiz tal-pajjiz matul l-ahhar zminijiet li jsibu l-impronta taghhom b`mod tangibbli fl-iskeda li hejja l-perit tekniku.

Skont il-perit tekniku, il-valur lokatizju prezenti ta` l-fond de quo huwa ta` EUR 86,540 fis-sena.

Il-valur tal-propjeta` fl-intier taghha, libera u franka, meqjusa bhala kummercjali, ghaliex hekk hi, tammonta ghal EUR 1,500,000.

Dawn il-valutazzjonijiet jikkontrastaw b`mod evidenti ferm mar-ritorn li qed ihalli l-fond fil-prezent. Id-diskrepanza fil-valur lokatizju fis-suq ta` l-fond ma thalli ebda dubju.

Minkejja d-diskrepanza, din il-Qorti tirriafferma li l-kumpens bhala rimedju kostituzzjonali mhuwiex ekwivalenti ta` bilfors ghal rimbors favur is-sid tal-valur shih fis-suq hieles.

Fil-kaz tal-lum, din il-Qorti ma tqisx li semplici dikjarazzjoni taghha ta` vjolazzjoni wahedha tkun bizzejjed bhala rimedju favur ir-rikorrent.

Ir-rikorrent haqqu kumpens fi flus ghall-vjolazzjoni subita.

Mir-ricerka li ghamlet tas-sitwazzjoni nostrana, din il-Qorti ma ltaqghet ma l-ebda decizjoni dwar quantum mill-Qorti Kostituzzjonali li kienet tirrigwarda fondi kummercjali bhal ma huwa l-fond tal-lum.

Iltaqghet biss ma` decizjonijiet li kienu jirrigwardaw fondi residenzjali, sahansitra fid-decizjonijiet mill-aktar ricenti li nghataw mill-Qorti Kostituzzjonali fil-25 ta` April 2018.

Fic-cirkostanzi, il-Qorti ghal darb`ohra terga` tirreferi ghad-decizjoni tal-ECHR fil-kaz ta` **Zammit and Attard Cassar v Malta** (op. cit.).

Il-fond mertu ta` dik il-kawza kien jinsab gewwa Haz-Zabbar u fid-data li nghatat id-decizjoni kien jismu Cressi-Sub Store.

L-ECHR ghamlet likwidazzjoni ta` kumpens fl-ammont ta` EUR 40,000 abbazi ta` dawn il-konsiderazzjonijiet :

> *73. The applicants claimed 99,000 euros (EUR) plus interest in respect of pecuniary damage for the period 2002 to 2014 (the date of their claims).*
>
> *Their calculation was based on an average rent of EUR 8,250, to be multiplied by twelve years, bearing in mind that according to expert valuations, the property had a rental value in 2002 of EUR 7,000 and in 2013 of EUR 9,500. They made no claim for non-pecuniary damage.*
>
> *74. The Government submitted that the applicants` claims were exorbitant and that the architect`s valuations had not given any indication of a comparative analysis. They considered that the value could not be considered on the basis of an average, as worked out by the applicants.*
>
> *Given that the rental value had increased by EUR 2,500 over eleven years, the increase in value was of 3% per year. Moreover, the applicants were still able to withdraw the amounts deposited in court by the tenants and thus those sums (according to the Government amounting to around EUR 10,000), together with interest on them, must be deducted from the claim, as the applicants had freely chosen not to withdraw such sums. In the Government`s view, an award for pecuniary damage (sic.) should not exceed EUR 10,000 jointly.*
>
> *75. The Court notes that the applicants seek compensation in respect of their property from December 2002 to date. The Court is of the view that the applicants should be awarded just satisfaction based on a reasonable amount of rent which would*

have provided them with more than a minimal profit (see Fleri Soler and Camilleri v. Malta (just satisfaction), no. 35349/05, § 18, 17 July 2008). In assessing the pecuniary damage sustained by them, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values in the Maltese property market during the relevant period. The Court notes that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, inter alia, Jahn and Others v. Germany [GC], nos. 46720/99, 72203/01 and 72552/01, § 94, ECHR 2005-VI, and Amato Gauci, cited above, § 77). Nonetheless, ***the Court bears in mind that the property was not used for securing the social welfare of tenants or preventing homelessness*** *(see Fleri Soler (just satisfaction) cited above, § 18).* ***Thus, the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value*** *(compare also Amato Gauci, cited above, § 77, and Ghigo v. Malta (just satisfaction), no. 31122/05, § 20, 17 July 2008).*

76. The Court considers that a one-off payment of 5% interest should be added to the above amount (ibid.).

77. It takes note that the sums deposited in court by the tenants over the years remain retrievable by the applicants and are therefore deducted.

78. Bearing those principles in mind, the Court considers it reasonable to award the applicants, jointly, ***EUR 40,000*** *in pecuniary damage.*

(enfazi ta` din il-Qorti)

Il-Qorti hadet kont ta` kollox.

Qieset l-assjem ta` l-fatti u cirkostanzi tal-kaz, il-fatt li hawn si tratta ta` hanut sitwat fil-parti ta` fuq ta` Triq ir-Repubblika, Valletta, il-konteggi tal-kirja li thallsu matul iz-zmien, l-aggustamenti li saru skont il-ligi sal-lum, il-valur fis-suq hieles, il-valur lokatizju matul iz-zmien sal-lum, id-dikjarazzjoni taghha li kien hemm vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni, iz-zmien ta` riflessjoni li ha r-rikorrent qabel ta bidu ghall-procediment tal-lum, il-linja ta` gurisprudenza traccjata mill-qrati taghna u mill-ECHR. In partikolari tishaq li d-decizjoni ta` Zammit and Cassar v. Malta saret finali fit-30 ta` Ottubru 2015.

Abbazi ta` dan kollu, il-Qorti hija tal-fehma konsiderata illi r-rikorrent ghandu jithallas komplessivament kumpens pekunjarju u mhux pekunjarju ta` mitt elf Ewro (€100,000).

Dan il-kumpens ghandu jithallas kollu kemm hu mill-Avukat Generali ghar-raguni li l-intimati Flores ma kienux responsabbli ghal-lezjoni mgarrba mir-rikorrent u kkomportaw ruhhom fil-parametri tal-ligi.

XI. Spejjez

Il-Qorti sejra tiddeciedi l-kap tal-ispejjez fil-kawza tal-lum in linea ma` dak li kien deciz dwar il-kap tal-ispejjez mill-Qorti Kostituzzjonali fil-25 ta` April 2018 fis-sittax-il kawza li kellhom bhala l-occhio l-ismijiet : "Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et" u fejn fl-ewwel istanza din il-Qorti kienet presjeduta mill-Imhallef illum sedenti. Sejra taghmel dan ghaliex hekk jixraq fil-kaz tal-lum.

Decide

Ghar-ragunijiet kollha premessi, il-Qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimat Avukat Generali billi din kienet ritirata.

Tilqa` it-tieni (2) eccezzjoni tal-intimat Avukat Generali.

In vista tad-decizjoni taghha dwar it-tieni (2) eccezzjoni tal-intimat Avukat Generali, qeghda tastjeni milli tiehu konjizzzjoni ulterjuri tat-tielet (3) eccezzjoni tal-intimat Avukat Generali.

Tilqa` t-tielet (3) u l-hdax (11)-il eccezzjoni tal-intimat Karl Flores pro et noe.

In vista tad-decizjoni taghha dwar it-tielet (3) eccezzjoni tal-intimat Karl Flores pro et noe, qeghda tastjeni milli tiehu konjizzjoni ulterjuri tar-raba`(4) eccezzjoni tal-intimat Karl Flores pro et noe.

Tichad l-ewwel (1), it-tieni (2), il-hames (5), is-sitt (6), is-seba` (7), it-tmien (8), id-disa` (9) u l-ghaxar (10) eccezzjonijiet tal-intimat Karl Flores pro et noe.

Tichad ir-raba` (4) il-hames (5) is-sitt (6) is-sebgha (7) it-tmien (8) id-disa` (9) u l-ghaxar (10) eccezzjonijiet tal-intimat Avukat Generali.

Tilqa` l-ewwel (1) talba tar-rikorrent limitatament safejn din tirrigwarda l-Ewwel (1) Artikolu tal-Ewwel (1) Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fondamentali. Ghalhekk tiddikjara illi ghar-rigward tal-fond kummercjali mertu ta` din il-kawza r-rikorrent garrab vjolazzjoni tal-jeddijiet fondamentali tieghu kif tutelati bl-imsemmija disposizzjoni tal-Konvenzjoni.

Tichad il-bqija ta` l-ewwel talba tar-rikorrent.

Tichad safejn fit-tieni talba r-rikorrent talab li jinghata l-pussess effettiv tal-fond 295/296, Triq ir-Repubblika, Valletta.

Riferibbilment ghat-tieni talba, safejn ir-rikorrent talab kumpens, tillikwida bhala kumpens komplessiv, pekunjarju u mhux pekunjarju, favur ir-rikorrent ghall-vjolazzjoni li garrab skont l-ewwel (1) talba s-somma ta` mitt elf Ewro (€100,000).

Tikkundanna lill-Avukat Generali sabiex ihallas lir-rikorrent s-somma hekk likwidata.

Tordna li l-ispejjez kollha ta` din il-kawza, inkluzi l-ispejjez tal-intimat Karl Flores pro et noe, ghandhom jithallsu in kwantu ghal nofs mir-rikorrent u kwantu ghal nofs mill-Avukat Generali.

Tordna lir-Registratur tal-Qorti sabiex kif appena din is-sentenza tghaddi in gudikat jibghat kopja taghha lill-Ispeaker tal-Kamra tad-Deputati kif irid l-Artikolu 242 tal-Kapitolu 12 tal-Ligijiet ta` Malta.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur