QORTI KOSTITUZZJONALI

IMHALLFIN

S.T.O. PRIM IMHALLEF JOSEPH AZZOPARDI
ONOR. IMHALLEF GIANNINO CARUANA DEMAJO
ONOR. IMHALLEF NOEL CUSCHIERI

Seduta ta' nhar il-Gimgha, 29 ta' Marzu, 2019.

Numru 1

Rikors numru 9/17JZM

Louis Apap Bologna

v.

Avukat Generali u Karl Flores sew f'ismu proprju u bhala prokuratur tal-assenti Ivan Bagnasco u Vania Bagnasco ulied Sandra Flores

Preliminari

1. Dan huma tlett appelli maghmulin wiehed mill-intimat Avukat Generali, iehor maghmul mir-rikorrent Louis Apap Bologna [ir-rikorrent Apap Bologna] u l-ahhar wiehed maghmul b'mod incidentali mill-intimat Karl Flores f'ismu u bhala prokuratur tal-assenti Ian Bagnasco u Vania Bagnasco [l-intimati Flores] mis-sentenza moghtija fl-4 ta' Gunju, 2018,

[is-sentenza appellata], mill-Prim'Awla tal-Qorti Civili fil-kompetenza kostituzzjonali taghha [l-ewwel Qorti], li permezz taghha dik il-Qorti ddikjarat li ghar-rigward tal-fond kummercjali mertu ta' din il-kawza, ir-rikorrent Apap Bologna garrab ksur tal-jeddijiet fondamentali tieghu kif sanciti permezz tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u tal-Libertajiet Fundamentali [il-Konvenzjoni] u llikwidat bhala kumpens pekunjarju u mhux pekunjarju s-somma komplessiva ta' €100,000 li kellha tithallas mill-intimat Avukat Generali lir-rikorrent Apap Bologna ghall-ksur li garrab, filwaqt li ordnat li l-ispejjez tal-procedura, inkluzi dawk tal-intimati Flores, jithallsu in kwantu ghal nofs mir-rikorrent Apap Bologna u in kwantu ghan-nofs l-iehor mill-intimat Avukat Generali.

Mertu

2. Illi r-rikorrent Apap Bologna fetah dawn il-proceduri fejn talab lill-ewwel Qorti:

> "1. Tiddikjara li qeghdin jigu vjolati d-drittijiet fondamaentali tar-rikorrenti kif sanciti mill-Artikoli 37 tal-Kostituzzjoi 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."

Fatti

3. Dawn jinsabu deskritti b'mod komprensiv u adegwat fir-rikors tal-appell tal-intimat Avukat Generali:

> "3. Il-kirja tal-post bin-numri 295 u 296 fi Triq ir-Repubblika Valletta tmur lura ghal hafna ghexieren ta' snin. Mhux car ezatt meta l-post inghata b'kirja ghall-ewwel darba lid-ditta H. McBailey & Co., izda mill-atti jidher li fit-**22 ta' Jannar 1922**, l-ahwa Gustaf u William Gollcher kienu ghazlu li jkomplu l-kirja ma' Vincenza armla Grech, bhala rapprezentanta tad-ditta H. McBailey & Co ghal zmien ta' erba' snin *di fermo*, bil-hlas ta' mitt lira sterlina fis-sena;
>
> "4. Fis-sena 1922 ma kien hemm l-ebda ligi li kienet tobbliga lis-sid li jgedded il-kirja mal-inkwilin meta din taghlaq zmienha. Meta sar dan il-kuntratt il-**Kap 69 tal-Ligijiet ta' Malta** ma kienx jezisti. Izda waqt li kien ghaddej il-kuntratt dahal fis-sehh l-**Att I tal-1925**. Dan l-Att li nhareg biss bl-Ingliz u bit-Taljan, kien jismu, "***an Act to make special temporary provisions respecting rent and conditions in re-letting immoveable urban property***";
>
> "5. Fit-termini tal-**artikolu 3 tal-Att 1 tal-1925**, jekk sid il-kera ried jiehu lura l-post mikri jew jgholli l-kera wara l-gheluq taghha, huwa kellu l-ewwel jibghat ittra ufficjali fi zmien xahar qabel taghlaq il-kirja. Jekk ma jaghmilx dan il-kirja kienet tiggedded awtomatikament taht l-istess kundizzjonijiet skond l-**artikolu 1289 tal-Ordinanza VII tal-1868** (illum l-**artikolu 1536 tal-Kap 16 tal-Ligijiet ta' Malta**".
>
> ..... omissis .....
>
> "6. Jekk is-sid jibghat l-ittra ufficjali, l-kerrej kellu l-jedd skont l-**artikolu 4** li jikkontestaha quddiem il-Commissione Arbitrale".
>
> ..... omissis .....
>
> "9. Fil-kaz taghna ma jidhirx li giet iffirmata xi skrittura ohra wara li ghaddew l-erba' snin mit-22 ta' Jannar 1922. Louis Apap Bologna fl-affidavit tieghu jghid li l-kirja baqghet tiggedded b'effett talligi. Lanqas ma jirrizulta li s-sidien baghtu ittra ufficjali biex ma jgeddux il-kirja jew talbu biex tizdied il-kera skont l-**artikolu 3 tal-Att I tal-1925**. Ghalhekk fin-nuqqas tal-ittra ufficjali l-kirja giet imgedda b'mod implicitu taht l-

istess kundizzjonijiet skond l-**artikolu 1289 tal-Ordinanza VII tal-1868** (illum l-**artikolu 1536 tal-Kap 16 tal-Ligijiet ta' Malta**). Fi kliem iehor, wara Jannar 1926, il-kirja regghet giet imgedda ghal 4 snin ohra sas-sena 1930, bil-kera ta' mitt lira sterlina fis-sena;

"10. Fl-1929 waqt li kien ghadu ma skadiex il-perijodu ta' rilokazzjoni, dahal fis-sehh l-**Att XXIII tal-1929,** li kien jismu '***An Act to make temporary provisions respecting the rend and the conditions in re-letting immovable urban property and for purposes connected therewith**";*

"11. Dan l-Att kellu jibqa' fis-sehh sal-31 ta' Dicembru 1933 (**artikolu 3**);

"12. Bis-sahha ta' din il-ligi l-procedura tal-ittra ufficjali qabel l-gheluq tal-kirja tnehhiet. Skond l-**artikolu 4 tal-Att** is-sidd ma setax jirrifjutamilli jgedded il-kirja wara l-gheluq taghha u lanqas li jgholli l-kera b'kemm irid. Biex jaghmel dan huwa kellu jikseb l-awtorizzazzjoni minn qabel tal-Bord li Jirregola l-Kera;

"13. B'hekk bil-ligi l-gdida s-sitwqazzjoni nbidlet ta' taht fuq. Filwaqt li fl-**Att I tal-1925** kellu jkun il-kerrej li jmur quddiem il-Commissione Arbitrale biex tiggeddidlu l-kera jew li ma jhallasx zieda fil-kera, mill-banda l-ohra bl-**Att XXIII tal-1929**, kellu jkun is-sid li jmur quddiemil-Bord Li Jirregola l-Kera biexma tiggeddidx il-kera jew biex tizdied il-kera. Minbarra dan, taht din l-ahhar ligi, 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 (**artikolu 12**)";

..... omissis .....

"15. Maz-zmien l-**Att XXIII tal-1929** haldu postu l-**Ordinanza XXI tal-1931** (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**). Skont din l-Ordinanza, fond seta 'jittiehed lura mal-gheluq tal-kirja bil-permess tal-Bord Li Jiregola l-Kera fl-unici ipotezijiet ta' morozita` fil-hlas tal-kera u f'kaz ta' bzonn tas-sid. Maz-zminijiet il-kawzali ghar-ripresa tal-fond gew mizjuda izda dan pero` mhux rilevanti ghall-kaz li ghadna quddiemna;

"16. Bis-sahha tal-**Ordinanza XXI tal-1931** il-protezzjoni tat-tigdid tal-kera ma baqghetx aktar temporanja izda saret wahda definittiva;

"17. Minhabba l-**Att XXIII tal-1929** is-sidien tal-hanut bin-numri 295 u 296 fi Triq ir-Repubblika, fil-Belt Valletta ma setghux jirrifjutaw milli jgeddu l-kera jew izidu l-hlas taghha wara l-1930, hlief jekk bil-permess tal-Bord Li Jirregola l-Kera. Mill-atti ma jirrizultax li s-sidien talbu lill-

Bord biex il-kirja ma tiggeddidx jew biex il-kirja tigi mizjuda. Billi dan l-Att kellu jibqa' fis-sehh sal-31 ta' Dicembru 1933, dankien ifisser lil-inkwilini kellhom protezzjoni temporanja sa dik id-data;

"18. Eventwalment l-obbligu temporanju tat-tigdid tal-kera rifless fl-**Att XXIII tal-1929** li kien impost fuq l-awturi ta' Louis Apap Bologna sar definittiv bl-**Ordinanza XXI tal-1931**, illum **Kap 69 tal-Ligijiet ta' Malta**;

"19. Dan ifisser li x'aktarx mill-1922 'il quddiem il-kera tal-hanut baqghet fl-ammont ta' mitt lira sterlina fis-sena kif indikat fil-ftehim tat-22 ta' Jannar 1922;

"20. L-istess Louis Apap Bologna izid jghid pero` fl-affidavit tieghu li fis-sena 1964 kien intlahaq ftehim bejn is-sidien u l-inkwilini biex il-kera tal-hanut toghla ghal Lm150 fis-sena. Dan il-ftehim dejjem skont Louis Apap Bologna kien gie ratifikat ukoll mill-bord Li Jirregola l-Kera. Mistoqsi in kontro-ezami, Louis Apap Bologna stqarr li qatt ma kienu nbdew proceduri quddiem il-Bord Li Jirregola l-Kera min-naha tas-sidien sabiex tizdied il-kera;

"21. Fis-sena tmenin, is-sidien tal-hanut 295/296 fi Triq ir-Repubblika, fil-Belt Valletta kienu Louis Apap Bologna u l-Captain O.F. Gollcher O.B.E. Art and Archaeological Foundation. Dawn il-partijiet ma ridux jibqghu aktar f'xirka bejniethom. Ghalhekk b'att ta' divizjoni tal-**11 ta' Settembru 1980**, iddecidew li jaqsmu l-hanut f'zewg partijiet. Louis Apap Bologna ha l-parti tal-hanut li tidhol min-numru 296, waqt li l-Fondazzjoni hadet il-parti tal-hanut li kellha d-dhul min-numru 295;

"22. Sadanittant il-kirja tal-hanut 295/296 waqghet f'idejn Karl Flores, dan kif jidher mill-kuntratti tal-18 ta' Frar 1981 u tad-9 ta' Dicembru 1981;

"23. Louis Apap Bologna u l-Captain O.F. Gollcher O.B.E. Art and Archaeological Foundation irrifjutaw dawn il-kuntratti, tant li b'sehh mit-22 ta' Jannar 1982 huma bdew jirrifjutaw illi jircievu l-hlas tal-kera. Dawn is-sidien kienu anke fehtu proceduri quddiem il-Bord Li Jirregola l-Kera sabiexd tawtorizzahom jiehdu lura l-hanut minhabba sullokazzjoni mhux awtorizzata u bdil fil-bixra tan-negozju, izda din it-talba giet michuda mill-Bord permezz ta' sentenza tal-15 ta' Marzu 2001, li ma gietx appellata;

"24. Minkejja din is-sentenza, Louis Apap Bologna u l-Fondazzjoni bhala s-sidien rispettivi tal-hanut 295 u 296, xorta baqghu ma jaccettawx il-kera. Kien sewwasew ghalhekk li mit-18 ta' April 2001 'il quddiem, l-intimat Karl Flores u l-ahwa Bagnasco bdew jiddepozitaw il-kera fir-registru tal-Qorti permezz ta' cedoli. L-ewwel cedola ta' depozitu saret fit-18 ta' April 2001 fl-ammont ta' Lm2828.84 u din kienet tigbor fiha l-kirjiet kollha bejn it-22 ta' Jannar 1982 u t-22 ta' Jannar 2001. Wara din ic-cedola, bdew jigu depozitati cedoli fl-ammont ta'

> Lm150 jew €394.41 kull sena. Dan baqa' jsir hekk sakemm dahal fis-sehh l-**Att X tal-2009**;
>
> "25. Permezz ta' dan l-Att Parlamentari, gie introdott l-**artikolu 1531D** fil-**Kap 16 tal-Ligijiet ta' Malta**. Bhala rizultat ta' dan l-artikolu l-kera tal-hanut gholiet bi hmistax fil-mija kull sena fuq l-ahhar kera bejn l-1 ta' Jannar, 2010 u l-31 ta' Dicembru, 2013. Fi kliem iehor, il-kera zdiedet hekk: (i) sena 2010 - €401.82; (ii) sena 2011 - €462.09, (iii) sena 2012 - €531.41 u (iv) sena 2013 - €611.11;
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> "26. Dejjem bis-sahha ta' din il-ligi, mill-1 ta' Jannar, 2014, il-kera kellha tizdied jew skont l-Indici tal-Valur Kummecjali tal-Proprjeta` kif jista' jigi stabbilit b'regolamenti maghmulin mil-Ministru responsabbli jew fin-nuqqas ta' regolamenti, b'hamsa fil-mija fis-sena sad-dhul fis-sehh tal-imsemmija regolamenti;
>
> "27. Billi dawn ir-regolamenti dwar l-Indici tal-Valur Kummercjali tal-proprjeta` baqghu ma dahlux fis-sehh, allura l-kera tal-hanut kellha tizdied bil-hamsa fil-mija. Ghalhekk il-kera zdiedet hekk: (i) sena 2014 - €641.67; (ii) sena 2015 - €673.75; (iii) sena 2016 - €707.44; u (iv0 sena 2017 - €742.81;
>
> "28. Minn wara d-dhul fis-sehh tal-**Att X tal-2009** Karl Flores u l-ahwa Bagnasco bdew ipprezentaw ic-cedoli bil-hlas tal-kera skont kif rifless fl-**artikolu 1531D** fil-**Kap 16 tal-Ligijiet ta' Malta**;
>
> "29. Fit-22 ta' Frar 2017, Louis Apap Bologna fetah dawn il-proceduri kostituzzjonali fil-konfront biss tal-fond numru 296 fi Triq ir-Repubblika, fil-Belt Valletta".

4. L-intimat Avukat Generali u l-intimati Flores fir-risposti rispettivi taghhom eccepew li t-talbiet tar-rikorrent Apap Bologna kellhom jigu michuda ghar-ragunijiet hemm imfissra, bl-ispejjez kontra l-istess rikorrent Apap Bologna.

Is-Sentenza Appellata

5. L-ewwel Qorti waslet ghad-decizjoni taghha wara li ghamlet il-konsiderazzjonijiet segwenti.

"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. It-tielet (3) eccezzjoni tal-intimat Avukat Generali u r-raba` (4) eccezzjoni tal-intimat Flores pro et noe**

"**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 **<u>Robert Galea vs Avukat Generali et</u>** 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 **<u>Ian Peter Ellis et vs Avukat Generali et</u>**). 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. <u>It-tieni (2) eccezzjoni tal-intimat Karl Flores pro et noe</u>**

"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 effettiv u adegwat 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 : **David Axiak vs Awtorita` tat-Trasport Pubbliku** : 14 ta` Mejju 2004 ; u **Salvatore Abdilla vs Onor. Seg. Parlamentari Ambjent** : 30 ta` Mejju 2003)

"**L-eccezzjoni qeghda tkun michuda.**

"VIII. Il-hames (5) eccezzjoni tal-intimat Karl Flores pro et noe

"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) <u>Gurisprudenza tal-ECHR</u>**

"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 **<u>Amato Gauci vs Malta</u>** (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 **<u>Sporrong and Lönnroth</u>** cited above, §§ 69-74, and **<u>Brumărescu v. Romania</u>** [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 **<u>James and Others</u>**, cited above, § 50; **<u>Mellacher and Others</u>**, cited above, § 48, and **<u>Spadea and Scalabrino v. Italy</u>**, 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 **<u>Immobiliare Saffi v. Italy</u>**, [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) Gurisprudenza tal-Qrati Maltin**

"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 : **Dr. Cedric Mifsud et vs l-Avukat Generali et** deciza mill-QK fil-25 ta` Ottubru 2013 ; **Angela sive` Gina Balzan vs L-Onorevoli Prim Ministru et** deciza mill-QK fis-7 ta` Dicembru 2012 ; **AIC Joseph Barbara et vs L-Onor Prim Ministru et** deciza 31 ta` Jannar 2014 ; **Maria Ludgarda Borg et vs Rosario Mifsud et** deciza mill-QK fid-29 ta` April 2016 ; **Concetta sive` Connie Cini vs Eleonora Galea et** deciza mill-QK fil-31 ta` Jannar 2014 ; **Robert Galea vs Avukat Generali et** deciza mill-PA/GK fis-7 ta` Frar 2017 ; **Rose Borg vs Avukat Generali et** deciza mill-QK fil-11 ta` Lulju 2016 ; id-diversi kawzi bl-*occhio* **Josephine Azzopardi et vs L-Onor Prim Ministru et** li kienu decizi fil-25 ta` April 2018 ; **Sergio Falzon et vs Alfred Farrugia et** 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 **ghall-fini ta` dan il-procediment** 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) Bdil ghall-ahjar fil-qaghda ekonomika tal-pajjiz**

"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) L-accettazzjoni tal-kera**

"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) <u>Zieda fil-kera</u>**

"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.

"**<u>L-Art 1531D tal-Kap 16</u>** 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` **<u>Zammit and Attard Cassar v Malta</u>** (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) <u>Il-pussess effettiv tal-fond de quo</u>**

"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 **<u>Michael Angelo Briffa et vs Nadia Merten</u>** 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 <u>fondi residenzjali</u>, 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` **<u>Zammit and Attard Cassar v Malta</u>** (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` <u>Zammit and Cassar v. Malta</u> 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. <u>Spejjez</u>

"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 : "<u>Josephine Azzopardi pro et noe vs L-Onorevoli Prim Ministru et</u>" u fejn fl-ewwel istanza din il-Qorti kienet presjeduta mill-Imhallef illum sedenti. Sejra taghmel dan ghaliex hekk jixraq fil-kaz tal-lum."

L-Appell tal-intimat Avukat Generali

6. L-intimat Avukat Generali pprezenta l-appell tieghu fil-11 ta' Gunju, 2018, fejn talab ir-riforma tas-sentenza tal-ewwel Qorti billi filwaqt li tigi kkonfermata fejn l-ewwel Qorti ddikjarat li ma kienux gew miksura l-jeddijiet fundamentali tar-rikorrent Apap Bologna kif protetti taht l-Artikolu 37 tal-Kostituzzjoni ta' Malta, tigi mhassra f'dik il-parti fejn (a) iddikjarat li l-istess rikorrent Apap Bologna garrab ksur tal-jeddijiet fundamentali tieghu ta' proprjeta` kif imharsa taht l-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni; (b) ikkundannat l-intimat Avukat Generali jhallas kumpens pekunjarju u mhux pekunjarju ta' €100,000; u (c) ordnat lill-intimat Avukat Generali jhallas nofs l-ispejjez tal-procedura, u minflok tichad it-talbiet kollha tar-rikorrent Apap Bologna, bl-ispejjez kontrih.

7. L-aggravji huma s-segwenti:

(a) ir-rikorrent Apap Bologna ma kienx wera b'mod sodisfacenti li hu kien garrab xi piz eccessiv u sproporzjonat minhabba l-ammont ta' kera li qed idahhal; u

(b) ma kienx hemm raguni tajba biex l-intimat Avukat Generali jigi ordnat ihallas kumpens komplessiv ta' €100,000.

L-Appell tar-rikorrent Apap Bologna

8. Ir-rikorrent Apap Bologna pprezenta l-appell tieghu fl-14 ta' Gunju, 2018, fejn talab ir-riforma tas-sentenza appellata billi jigi likwidat kumpens f'ammont superjuri ghal dak ta' mitt elf ewro (€100,000) u jigu akkollati kollha l-ispejjez tal-ewwel istanza kontra l-intimat Avukat Generali, u wkoll ir-revoka tas-sentenza appellata fejn l-ewwel Qorti (a) cahdet li jinghata lilu l-pussess effettiv tal-fond 295/296, Triq ir-Repubblika, Valletta u minflok, tilqa' dik it-talba fir-rigward tal-fond 296; (b) laqghet il-hdax-il eccezzjoni tal-intimati Flores u minflok tichad l-istess; filwaqt li tigi konfermata s-sentenza appellata fil-bqija taghha, bl-ispejjez a karigu tal-intimat Avukat Generali.

Risposta tal-intimat Avukat Generali ghall-appell tar-rikorrent Apap Bologna

9. Fir-risposta tieghu, l-intimat Avukat Generali qed jissottometti li (i) dwar l-ewwel aggravju l-kumpens moghti mill-ewwel Qorti ghandu jkun ferm anqas; (ii) din il-Qorti diversi drabi rriteniet li ma kienetx il-forum kompetenti sabiex jigi ordnat ir-radd lura tal-fond; u (iii) l-ilment dwar l-

ispejjez ma kienx gustifikat ghaliex generalment dawn jinqasmu skont il-kriterju tar-rebh u tat-telf.

Risposta w appell incidentali tal-intimati Flores

10. Filwaqt li fir-risposta taghhom l-intimati Flores qed jiddikjaraw li huma jaqblu mal-aggravji tal-intimat Avukat Generali u ma kellhom xejn x'izidu maghhom fir-rigward, huma jissottomettu s-segwenti:

a. l-ammont likwidat bhala kumpens kien wiehed gholi;
b. il-fondi 295/296 kienu wiehed u regolati permezz ta' kirja wahda u ghalhekk ma setghux jigu zgumbrati minn parti biss, dan apparti li huma kienu biss strahu fuq id-drittijiet moghtija lilhom skond il-ligi u l-hanut kien sors importanti ghall-ghexien taghhom;
c. huma ma kellhomx ibaghtu l-ispejjez tal-procedura.

11. L-intimati Flores ipprevalixxu ruhhom mir-risposta taghhom sabiex b'hekk intavolaw ukoll appell incidentali fejn qed iresqu s-segwenti aggravji:

a. ir-rikorrent ma kienx ezawrixxa r-rimedji ordinarji;

b. il-kirja protetta b'ligi li giet fis-sehh qabel 1987 ma setghetx tigi ezaminata mill-Qrati *rationae temporis* u *rationae materiae;*
c. il-Gvern ghandu kull dritt li jikkontrolla l-uzu tal-proprjeta` fl-interess generali.

Risposta tar-rikorrent Apap Bologna ghall-appell tal-intimat Avukat Generali

12. Ir-rikorrent Apap Bologna qed jitlob sabiex l-appell tal-intimat Avukat Generali jigi michud, u dan filwaqt li jressaq is-segwenti sottomissjonijiet:

a. il-ligi specjali tal-kera ma tohloqx bilanc gust;
b. l-izbilanc baqa jissussisti minkejja l-emendi li saru fl-2009;
c. ma jirrizultax li jezisti ghan legittimu ghall-indhil;
d. mhux argument validu li l-kirja kummercjali in kwistjoni kienet ser tieqaf fl-2028 u li z-zieda ta' 5% kienet ser trendi kera adegwata;
e. hu ma seta' qatt iressaq prova li tilef kirja ghaliex qatt ma seta' jinnegozja kera b'inkwilin gewwa l-hanut;
f. in-nuqqas tar-rikorrent Apap Bologna li qatt ma baghat ittra ufficjali skont il-ligi ghat-tehid lura tal-fond jew ghall-awment fil-kera ma kienetx tiggustifika li l-kirja kienet mizmuma

forzosament bi prezzijiet li mal-moghdija taz-zmien saru irrizorji;

g. fir-rikors tal-appell tieghu kien ressaq ir-ragunijiet ghaliex il-kumpens stabbilit kien insufficjenti u dawn kienu jghoddu fir-rigward tal-ilment dwar il-valur tal-kumpens; u
h. il-kumpens ta' €100,000 ghal fond maqbud f'kirja kontrollata ghal 93 sena ma kienx kumpens sufficjenti.

Risposta tar-rikorrent Apap Bologna ghall-appell incidentali tal-intimati Flores

13. Ir-rikorrent Apap Bologna fir-risposta tieghu jissottometti li l-aggravji tal-intimati Flores m'humiex fondati u ghalhekk ghandhom jigu rigettati. Dan filwaqt li ddikjara s-segwenti:

a. ir-rimedju kontemplat fis-subartikolu 4 tal-Kap. 69 ma kienx wiehed effettiv;
b. il-ksur tal-Artikolu 1 tal-Ewwel Protokoll huwa wiehed kontinwu;
c. hu ma kellux jispicca vittma ta' vjolazzjoni tal-Artikolu 13 tal-Konvenzjoni dwar rimedju effettiv; u

d. l-argumenti migjuba mill-intimati Flores ma kienux jissuperaw it-test ta' proporzjonalita`.

Kunsiderazzjonijiet ta' din il-Qorti

14. L-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni jinsab citat fis-sentenza appellata aktar 'il fuq f'din is-sentenza, u l-istess is-subartikolu 37(1) tal-Kostituzzjoni.

15. Il-Qorti issa ser tghaddi sabiex tikkunsidra l-aggravji mressqa mill-partijiet appellanti, ukoll ir-risposti ntavolati minnhom, u fejn l-aggravji taghhom huma l-istess jew simili sew, il-Qorti ser titrattahom flimkien.

L-Aggravji

L-ewwel aggravju tal-intimati Flores [ir-rikorrent ma kienx ezawrixxa r-rimedji ordinarji]

16. Fl-ewwel aggravju tal-appell incidentali taghhom, l-intimati Flores isostnu li galadarba r-rikorrent Apap Bologna qed jilmenta dwar il-fatt li hu ma kienx qed jircievi kera li tirrifletti dik skond is-suq miftuh, hu kellu

rimedju ordinarju ghad- disposizzjoni tieghu quddiem il-Bord li Jirregola l-Kera. Ir-rikorrent Apap Bologna jirrispondi billi jghid li l-Artikolu 4 tal-Kap. 69 ma jistax ighinu ghaliex filwaqt li l-ewwel paragrafu ta' dak l-Artikolu ma kienx applikabbli ghall-kaz odjern, it-tieni wiehed ma setax jissana l-ksur ghaliex zieda ta' 40% fuq il-valur lokatizju tal- 1914 ma setghet qatt tigi gustifikata meta wiehed jikkonsidra l-valur tal-proprjeta` tallum.

17. L-intimati Flores kienu diga` ressqu s-sottomissjoni taghhom bhala eccezzjoni quddiem l-ewwel Qorti, dik il-Qorti ikkonkludiet li fil-fehma taghha r-rikorrent Apap Bologna ma setax jinghad li kellu rimedju ordinarju effettiv u adegwat fejn u kif jindirizza l-lanjanzi tieghu. Ghalhekk dawn kellhom jitressqu quddiem il-qrati ta' gurisdizzjoni kostituzzjonali.

18. Din il-Qorti ma tistax ma taqbilx ma' dawn il-konsiderazzjonijiet. L-intimati Flores qed jippretendu li s-sistema ordinarja tipprovdi rimedju tajjeb u effettiv izda s-sottomissjonijiet taghhom ma jistghux ixejnu l-hsieb tal-Qorti li s-sistema ordinarja tonqos sew lis-sid u jpoggi lill-inkwilin f'posizzjoni ta' vantagg fuqu. Filwaqt li hi dik is-sistema li poggiet lis-sid f'relazzjoni guridika forzata ta' inkwilinat, hi wkoll dik is-sistema li holqot il-kondizzjonijiet ta' dak l-inkwilinat inkluz il-kontroll fuq

l-awment tal-kera li ghandu jippercepixxi s-sid u iz-zmien indefinit li fih ghandha tissussisti r-relazzjoni. Ukoll jekk is-sid jirrikorri ghall-Bord tal-Kera sabiex jenforza d-drittijiet tieghu, hawn isib li l-Bord jista' biss jordna awment fil-kera jew ir-rilaxx tal-fond f'parametri ristretti sew mill-istess ligi ordinarja. Dan kollu jista' biss ifisser li m'hemm xejn fil-ligi ordinarja li jipprovdi ghal rimedju effettiv, xieraq u adegwat ghar-rikorrenti.

19. Il-Qorti Ewropea meta qieset il-funzjoni tal-Bord tal-Kera sabet li filwaqt li dan il-Bord seta' offra l-protezzjoni procedurali adegwata sabiex ihares l-operat tas-sistema ta' kontroll, dan ma ghandu l-ebda effett utili ghar-rikorrenti appellanti.

> "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).". [1]

20. Ghalhekk din il-Qorti ssib li l-ilment tal-intimati Flores mhux gustifikat u qeghda tichad l-aggravju taghhom.

[1] Cassar v. Malta Ibid

It-tieni aggravju tal-intimati Flores [il-kirja ma setghetx tigi ezaminata mill-Qrati rationa temporis *u* rationa materiae*]*

21. L-intimati Flores jissottomettu li, galadarba l-kirja in kwistjoni twieldet qabel it-30 ta' April, 1987, u hi protetta minn ligi li kienet saret qabel dik id-data, ma setghetx tigi ezaminata taht l-Artikolu 1 tal-Ewwel Protokoll. Dan in vista tad-disposizzjonijiet tal-Artikolu 7 tal-Kap. 319. Ir-rikorrent Apap Bologna fl-ewwel lok issottometta li l-ksur lamentat kien wiehed kontinwu w allura kien jissussisti wkoll wara t-30 ta' April, 1987. Imbaghad irrileva li jekk jigi accettat l-argument tal-intimati Flores, dan kien iwassal ghal ksur tal-Artikolu 13 tal-Konvenzjoni ghaliex ma jkun hemm l-ebda rimedju hlief quddiem il-Qorti Ewropea u dan proprju meta l-Istat kellu d-dover li jassigura li r-rimedju jista' jinghata taht l-ordinament guridiku tal-pajjiz.

22. L-ewwel Qorti citat dak li kienet qalet l-istess Qorti (diversament presjeduta) fis-sentenza fl-ismijiet **Philip Grech pro et noe v. Direttur tal-Akkomodazzjoni Socjali et**[2] fejn fost osservazzjonijiet ohra ddikjarat li *"Illi jrid jinghad pero` illi t-tfixkil fit-tgawdija tal-possediment tar-rikorrenti huwa stat ta' fatt kontinwu li ghadu jippersisti sal-lum. ... B'hekk din il-Qorti ma tikkondividiex it-tezi tal-intimat li r-rikorrenti*

[2] P.A. 60/06, deciza 26 ta' Novembru, 2009.

m'ghandhomx azzjoni taht Kap. 319 ghal din ir-raguni u ghalhekk tichad din l-ewwel eccezzjoni tal-intimat ibbazata fuq l-eccezzjoni rationa temporis b'dan li din l-eccezzjoni qed tigi michuda". Imbaghad ghaddiet sabiex ghamlet taghha din il-gurisprudenza u sentenzi ohra bl-istess insenjament. Din il-Qorti ma ssib l-ebda raguni ghaliex ghandha tmur kontra dak li sabet l-ewwel Qorti u ghalhekk tichad dan l-aggravju tal-intimati Flores.

L-ewwel aggravju tal-intimat Avukat Generali [ir-rikorrent Apap Bologna ma kienx wera b'mod sodisfacenti li hu kien garrab xi piz eccessiv u sproporzjonat minhabba l-ammont ta' kera li qed idahhal]

It-tielet aggravju tal-intimati Flores [il-Gvern ghandu kull dritt li jikkontrolla l-uzu tal-proprjeta` fl-interess generali]

23. L-intimat Avukat Generali jissottometti li l-qofol ta' dan l-ewwel aggravju hu jekk il-ligi dwar it-tigdid tal-kera tizgurax il-hlas ta' kirja gusta. Meta jkun hemm ghanijiet legittimi mehuda fl-interess generali, bhal ma jirrizulta fil-kaz odjern, l-intimat Avukat Generali jghid li l-kumpens gust jista' jkun f'ammont ferm inqas mill-valur shih tas-suq.

24. L-intimati Flores jinsistu li l-Gvern ghandu kull interess li jghin in-negozji fit-tkattir taghhom, u ghalhekk ghandu kull dritt li jikkontrolla l-uzu tal-proprjeta` ghal dan il-ghan.

25. Ir-rikorrent Apap Bologna jressaq diversi argumenti sabiex jiggustifika d-decizjoni tal-Qorti li kien hemm ksur tal-Artikolu 1 tal-Ewwel Protokoll. Ighid li l-ligi specjali tal-kera ma kienetx tohloq bilanc gust bejn l-interessi tas-sid u dawk tal-Istat li jirregola t-tgawdija tal-proprjeta`, u dan gie ritenut f'diversi sentenzi tal-Qorti Ewropea u wkoll ta' dawn il-Qrati. Fil-kaz odjern, il-kera li kien jippercepixxi kull sena kienet ta' anqas minn €1,000 filwaqt li dik li kien intitolat ghaliha kienet ta' madwar €100,000 fis-sena. Il-ligi li emendat il-ligijiet tal-kera fl-2009 kienet riflessjoni tal-fatt li l-izbilanc verament jezisti u li hu insostenibbli, b'dana pero` li l-ministru kompetenti kien naqas milli jippubblika l-iskeda li fuqha kellha tinhadem il-kera attwali fis-suq. Ghalkemm fir-rikors tal-appell tieghu l-intimat Avukat Generali accenna tant, b'mod pjuttost xejn car, ghall-ghan legittimu tal-Istat, dan ma kienx irrizulta quddiem l-ewwel Qorti. Dan l-ghan ma setax jissussisti fejn il-kera tkun tant baxxa, aktar u aktar f'kaz li kien jirrigwarda kirja kummercjali. Lanqas ma kien argument validu tal-intimat Avukat Generali li l-protezzjoni tal-kirja kummercjali in kwistjoni kienet ser tieqaf fl-2028 ghaliex dan kien ifisser li l-inkwilin kien baqalu ghaxar snin ohra fil-hanut b'kera ta' €742.81 fis-sena. Fuq l-istess konsiderazzjoni l-Qorti Ewropea fis-sentenza taghha

fl-ismijiet **Zammit & Attard Cassar v. Malta**[3] kienet iddecidiet li wkoll hemm vjolazzjoni fil-kaz ta' hanut li l-kirja kellha tintemm fl-2028.

25. L-ewwel Qorti gharfet li l-Istat ghandu s-setgha u wkoll id-dritt li jikkontrolla l-uzu tal-proprjeta` fl-interess generali izda gharfet ukoll li dan ghandu jsir filwaqt li jigi mhares l-interess tal-privat sabiex jigi mhares ir-rekwizit ta' proporzjonalita'. Hawn l-ewwel Qorti ghamlet riferenza ghas-sentenzi tal-Qorti Ewropea fl-ismijiet **Amato Gauci v. Malta**[4] **, Cassar v. Malta**[5] u **Zammit and Attard Cassar v. Malta**[6]**,** u wkoll ghal bosta decizjonijiet ohra tal-Qrati taghna li kienu jirrigwardaw id-disposizzjonijiet tal-Kap. 158 fejn gie dikjarat ksur tal-Artikolu 1 tal-Ewwel Protokoll. Dawn tal-ahhar kienu jirrigwardaw residenzi u mhux fondi kummercjali izda xorta wahda kienu ta' siwi ghall-kaz in ezami. L-ewwel Qorti rrilevat li t-thaddim tal-Artikolu 1 tal-Ewwel Protokoll kien fih tlett principji u li kwalsiasi interferenza kellha tkun legali, mehuda ghal ghan legittimu fl-interess generali u li jinzamm il-bilanc gust.

26. Din il-Qorti taghmel referenza ghad-decizjoni tal-Qorti Ewropea fl-ismijiet **Hutten-Czapska v. Poland**[7] fejn gie enuncjat li l-Artikolu 1 tal-Ewwel Protokoll jabbraccja tlett regoli distinti izda marbuta ma' xulxin u

3 App. 1046/2012, deciza 30 ta' Lulju, 2015.
4 App. 47045/06, deciza 15 ta' Settembru, 2009, finali 15 ta' Dicembru, 2009.
5 App. 50570/13, deciza 30 ta' Jannar, 2018.
6 Supra.
7 App. No. 35015/97, deciza 19 ta' Gunju, 2006.

c-cirkostanzi partikolari ta' indhil fit-tieni u fit-tielet regola jistghu biss jigu interpretati fid-dawl tal-ewwel principju tad-dritt ta' persuna ghat-tgawdija pacifika tal-possedimenti taghha. Imbaghad f'decizjoni ohra tal-Qorti Ewropea fl-ismijiet **James v. Ir-Renju Unit**[8], dik il-Qorti gharfet il-fatt li l-Istat hu f'posizzjoni ahjar mill-imhallef internazzjonali sabiex jevalwa dak li hu fl-interess pubbliku. Irrilevat li l-organu legislattiv tal-Istat ghandu margni wesghin ta' apprezzament fl-implimentazzjoni ta' *policies* socjali w ekonomici, liema appezzament jigi rispettat sakemm il-Qorti ma ssibx li tali *policies* gew maghmula b'mod manifestament irragonevoli w allura, mbaghad hi kienet tikkunsidrahom taht l-Artikolu 1 tal-Ewwel Protokoll.

27. Huwa pacifiku ormaj fil-gurisprudenza tal-Qorti Ewropea, li l-kontroll fuq il-kera u r-restrizzjonijiet fuq it-tmiem ta' kuntratt ta' kera jikkostitwixxu kontroll fuq l-uzu tal-proprjeta` tal-individwu skond l-artikolu konvenzjonali fuq citat, u ghalhekk il-kaz odjern ghandu jigi kkunsidrat taht it-tieni paragrafu ta' dak l-artikolu. Izda sabiex l-indhil tal-Istat ikun jaqa' taht dak l-artikolu, hemm bzonn li l-indhil ikun legali, maghmul fl-interess generali u jilhaq bilanc gust bejn l-interess generali tal-komunita` u l-protezzjoni tad-drittijiet fondamentali tal-individwu[9]. Is-

[8] Deciza 21 ta' Frar, 1986.
[9] Ara App. Nru. 37121/15, **Bradshaw and Others v. Malta,** deciza 23 ta' Ottubru, 2018.

silta li ssegwi tigbor fiha l-ezercizzju shih li ghandha taghmel il-Qorti fid-determinazzjoni taghha dwar il-vertenza jekk sehhitx jew le.[10]

> *"56. In each case involving na 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* Amato Gauci, *cited above, §57). 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). "*[11]

28. Ghalhekk gustament l-ewwel Qorti osservat li fil-kaz odjern kellha taccerta ruhha jekk inzammx bilanc gust u proporzjonat bejn l-ghan socjali li jhares il-vijabbilita` ekonomika ta' intraprizi kummercjali mal-bzonn li jigu mharsa d-drittijiet tas-sidien ghat-tgawdija tal-possedimenti taghhom. L-intimat Avukat Generali jghid li l-ewwel Qorti sabet li l-mizien tal-proporzjonalita` kien ixaqleb b'mod eccessiv u negattiv kontra l-interessi tar-rikorrent Apap Bologna minhabba l-ammont zghir wisq li kien qed jithallas bhala kera meta mqabbel mal-istimi peritali mressqa fl-

[10] Supra.
[11] Supra.

atti tal-kawza. Kuntrarjament ghal dan insibu li l-ewwel Qorti ma haditx biss in konsiderazzjoni l-kera baxxa hafna li jhallsu l-intimati Flores, izda kkunsidrat is-segwenti fatturi wkoll, li: a) it-tigdid tal-kirja *ope legis*; b) il-bidla ghall-ahjar fil-qaghda ekonomika tal-pajjiz; c) l-accettazzjoni tal-kera da parti tas-sidien; d) nuqqas ta' talba biex tizdied il-kera; e) zieda fil-kera pattwita; f) iz-zmien meta tintemm kirja kummercjali; g) il-kera kif stabbilita mill-awturi tar-rikorrent; u waslet gustament ghall-konkluzjoni li l-piz li kellu jgorr is-sid kien wiehed sproporzjonat u eccessiv filwaqt li ma nghata l-ebda kumpens xieraq. L-ewwel Qorti ma setghetx tasal ghal konkluzjoni mod iehor tenut kont tal-fatturi kollha negattivi li jxeqilbu l-mizien tal-proporzjonalita` kontra r-rikorrent Apap Bologna.

29. L-intimat Avukat Generali donnu qed jippretendi li galadarba l-mizura mehuda mill-Istat saret fl-interess generali, dan hu sufficjenti biex jissana dik il-mizura. L-istess jinghad ghas-sottomissjonijiet maghmula mill-intimati Flores. Izda dawn qeghdin jonqsu milli jaghtu konsiderazzjoni lill-piz sproporzjonat li ntefa' fuq is-sid, sahansitra wkoll eccessiv, tenut ukoll kont il-fatt li ma kienux, u ma jezistux mizuri li jistghu jtaffu dan il-piz individwali, bhal per ezempju xi forma ta' ghajnuna mill-Istat lir-rikorrent Apap Bologna, intiz sabiex jikkoregu l-izbilanc li jezisti fil-prezent. Ukoll, lanqas jirrizulta lill-Qorti x'jedd kellhom, jekk kellhom, u ghad ghandhom l-intimati Flores sabiex jibbenifikaw minn kera f'ammont ferm inqas minn dik li jirrikjedi s-suq li

skond il-perit gudizzjarju l-kera annwali tlahhaq €86,540 fis-sena filwaqt li l-kera annwali li qed jircievu s-sidien fil-prezent hija ta' €707.40.

30. L-intimat Avukat Generali jghid li l-mizura mehuda mill-Istat fl-interess pubbliku kienet tirrikjedi kumpens ferm anqas mill-valur shih fis-suq. Abbazi ta' dan l-ewwel Qorti ma kellhiex issib ksur. Din il-Qorti tapprezza dan l-argument, u ma tistax tghid li in linea generali li ma taqbilx mieghu, izda fil-kaz odjern jirrizulta li l-kumpens mhux biss hu ferm anqas mill-valur shih fis-suq izda hu kwazi insinjifikanti. L-insenjament tal-Qorti Ewropea fuq il-valur tal-kumpens hu proprju dan:

> *"... 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)."*[12]

31. L-intimat Avukat Generali jilmenta mill-fatt li r-rikorrent Apap Bologna qatt ma baghat ittra ufficjali taht l-Artikolu 3 tal-Att I tal-1925 jew taht l-Artikolu 4 tal-Kap. 69 biex il-kera tizdied. L-ewwel Qorti kienet tal-fehma li dan l-argument ma kienx iregi fil-kuntest ta' proceduri ta' natura kostituzzjonali. Ukoll jekk kien jirrizulta li r-rikorrenti Apap Bologna kien ghamel talba ghall-awment, l-ewwel Qorti nnutat li l-ligi ma kienetx

[12] App. § 62, **Zammit and Attard Cassar v. Malta,** deciz 30 ta' Lulju, 2015.

tipprovdi ghal kondizzjonijiet biex l-eventwali awment ikun reali u gust. B'hekk r-rikorrent Apap Bologna u l-awturi tieghu ma kellhomx rimedji effettivi ghad-disposizzjoni taghhom. Din il-Qorti tikkondividi dan il-hsieb. Il-fatt li r-rikorrent Apap Bologna u l-awturi tieghu kellhom id-dritt li jinterpellaw lill-intimati Flores (jew l-awturi taghhom) ghal zieda fil-kera, ma jfissirx li din l-interpellazzjoni kienet ser twassal ghall-hlas ta' kera li aktar taghmel gustizzja mas-sid. Il-kera baqghet biz-zmien dejjem regolata bil-ligi restrittiva u r-rikorrent Apap Bologna u l-awturi tieghu qatt ma kellhom kontroll fuq l-ammont tal-kera li seta' jitlob bhala korrispettiv.

32. L-intimat Avukat Generali jzid ighid ma' dan li wara l-1 ta' Jannar, 2014, permezz tal-Artikolu 1531D tal-Kap. 16 il-kera dovuta kellha tizdied bil-5% kull sena, zieda li ma kienetx negligibbli w aktar kienet tirrifletti r-rejaltajiet tallum. L-intimati Flores ighidu li l-awment kellu jsir ftit ftit sabiex ma jkunx hemm effett serju u negattiv fuq in-negozju. L-ewwel Qorti osservat li bl-emendi fil-ligi li dahlu fis-sehh permezz tal-Att X tal-2009, l-awment fil-kera xorta wahda baqa' ma jirriflettix ir-realta` ekonomika u socjali tal-pajjiz. Dan principalment ghaliex, kif ighid ir-rikorrent Apap Bologna, l-awment jinhadem fuq kera li l-valur taghha kien stabbilit kwazi seklu ilu! Fil-frattemp, is-sid baqa' b'idejh marbuta ghaliex fin-nuqqas ta' ftehim mal-inkwilin, il-ligi kienet tistabbilixxi l-mod kif kellha tizdied il-kera. Din il-Qorti taqbel li din hi s-sitwazzjoni li

tirrizulta llum. L-Artikolu 1531D tal-Kodici Civili jipprovdi ghal zieda ta' 5% fuq il-kera tas-sena ta' qabel jekk ma jkunx hemm qbil u jekk ma jkunx hemm regolamenti maghmulin mill-Ministru responsabbli. Jirrizulta fil-kaz odjern li r-regolamenti qatt ma saru u li l-partijiet qatt ma waslu fuq qbil bejniethom dwar l-awment fil-kera. B'hekk ir-rikorrent Apap Bologna hu ntitolat li jircievi l-awment stipulat fis-subartikolu 1531D izda xorta wahda l-kera dovuta ma titbieghedx wisq minn dik li attwalment tithallas u li din il-Qorti tqis li hi wahda baxxa hafna. Din il-ligi ghalkemm intiza sabiex tindirizza l-izbilanc bejn il-kera mhallsa u dik dovuta, u kif sewwa jghid ir-rikorrent Apap Bologna fir-risposta tieghu, l-ghan tal-legislatur kien li ssir gustizzja mas-sid ma lehqitx l-ghan taghha u ma offrietx bilanc gust.

33. Argument iehor migjub mill-intimat Avukat Generali fir-rigward tal-bilanc gust li ntlehaq mill-Istat hu li l-kera ma kienetx ser tibqa' tiggedded ghal dejjem u kienet ser tintemm fis-sena 2028. L-intimati Flores isostnu li l-Gvern ma setax iwaqqaf hesrem il-kirjiet kummercjali minhabba l-impatt fuq l-ekonomija tal-pajjiz. L-ewwel Qorti filwaqt li ghamlet riferenza ghas-sentenza tal-Qorti Ewropea fl-ismijiet **Zammit and Attard Cassar v. Malta**[13]**,** iddikjarat li r-rikorrent Apap Bologna ser jibqa' jgorr piz mhux proporzjonat u eccessiv. Hawn ukoll din il-Qorti taqbel mar-ragunament tal-ewwel Qorti u ma' dan izzid tghid li (a) diga`

[13] Supra.

r-rikorrent Apap Bologna u l-awturi tieghu ilhom ghexieren ta' snin b'idejhom marbutin ma jistghux jitolbu dik il-kera minghand l-inkwilin li jidhrilhom huma; (b) din is-sitwazzjoni ser tkompli ghal ghaxar snin ohra u, (c) ir-rikorrent Apap Bologna m'ghandu l-ebda certezza li l-kirja ser tintemm fis-sena 2028 minghajr indhil ulterjuri mill-Istat.

34. Fattur iehor li l-intimat Avukat Generali talab lil din il-Qorti tikkunsidra hu li r-rikorrent Apap Bologna ma ressaq l-ebda prova li turi li hu kien kapaci jsib persuni disposti li jikru d-dar skont il-valuri stabbiliti mill-Perit Tekniku. Min-naha tieghu r-rikorrent Apap Bologna qed isostni li hu qatt ma kien f'posizzjoni li jsib jew li jirreklama l-kera tal-hanut ghaliex il-fond kien soggett ghal kera protetta mil-ligi. Il-Qorti diga` kellha l-opportunita` tesprimi ruhha fuq aggravju simili fis-sentenza taghha fl-ismijiet **Maria Stella *sive* Estelle u John konjugi Azzopardi Vella v. Avukat Generali u Henry u Judith konjugi Azzopardi**[14] fejn irriteniet li:

> *"…il-qorti, … tosserva illi din ma hijiex kawza civili ghal danni minhabba opportunita` mitlufa bi htija tal-konvenuti izda kawza ghal rimedji minhabba dak li l-atturi jqisu ksur tal-jedd taghhom ghat-tgawdija ta' hwejjighom; ghalhekk il-prova li riedu Avukat Generali u l-konvenuti Azzopardi ma hijiex strettament mehtiega ghalkemm tista' tkun fattur utli fost ohrajn bhal kriterju ghal-likwidazzjoni tad-danni. Barra minn hekk, ma huwiex realistiku li tistenna li l-atturi jressqu xhieda li jghidu li kienu lesti jikru l-fond minghandhom bil-kera ta' tant euro fis-sena. L-atturi ma ghandhomx id-disponibilita` tal-fond u ghalhekk ma jistghux realistikament jistiednu offerti ghall-kiri tieghu u jkollhom bilfors*

[14] Q. Kost. 15/2014, deciza 30 ta' Settembru, 2016.

> *joqoghdu fuq prova ta' kemm jinkrew postijiet simili fl-istess inhawi, prova li tista' ssir anki bil-hatra ta' perit tekniku."*[15]

Il-Qorti ma ssib l-ebda raguni ghaliex ghandha titbieghed minn dan ir-ragunament.

35. Ghal dawn ir-ragunijiet din il-Qorti ssib li dawn l-aggravji rispettivi tal-intimati huma nfondati u ghalhekk qeghda tichadhom.

Ir-rimedju

It-tieni aggravju tal-intimat Avukat Generali [m'hemmx raguni tajba li tiggustifika l-kumpens komplessiv ta' €100,000]

L-ewwel aggravju tar-rikorrent Apap Bologna [il-kumpens kellu jkun f'ammont akbar]

36. L-intimat Avukat Generali jghid li jaghraf zewg zbalji tal-ewwel Qorti li jiggustifikaw tnaqqis fil-kumpens ordnat. L-ewwel zball kien li l-valur lokatizju ttiehed fuq il-hanut intier li kien jikkonsisti f'zewg fond bin-numri rispettivi 295 u 296 meta r-rikorrent Apap Bologna kien sid tal-

[15] Ara wkoll Q. Kost. 2/2017, **Maria Pia sive Marian Galea v. Avukat Generali et**, deciz 14 ta' Dicembru, 2018.

fond li jgib in-numru 296. It-tieni zball kien fejn l-ewwel Qorti ddikjarat li ma kienx hemm sentenzi ta' din il-Qorti fejn il-kirja kummercjali kienet tixbah dik mertu ta' dawn il-proceduri. Fir-risposta tieghu ghal dan l-appell, ir-rikorrent Apap Bologna jaghmel riferenza ghall-appell interpost minnu u ddikjara li l-istess ragunijiet ghal dak l-appell kienu wkoll rilevanti ghar-risposta tieghu. Min-naha taghhom l-intimati Flores ukoll isostnu fir-risposta taghhom li l-kumpens likwidat hu pjuttost gholi, u huma jdentifikaw diversi fatturi li kellhom jitqiesu fl-ezercizzju ta' likwidazzjoni, inkluz il-fatt li r-rikorrent Apap Bologna kien sid ta' nofs il-hanut.

37. Ir-rikorrent Apap Bologna qed jippretendi li r-rimedju hu inadegwat u insufficjenti fir-rigward tal-ammont ta' kumpens likwidat ghaliex dan ma kienx jirrifletti l-gravita` tal-ksur. Fir-risposta tieghu ghall-appell tar-rikorrent Apap Bologna, l-intimat Avukat Generali jghid li l-qrati kostituzzjonali kellhom biss is-setgha li jillikwidaw danni ghall-ksur ta' jeddijiet fondamentali u mhux danni civili.

38. Din il-Qorti tosserva li hu minnu li r-rikorrent hu sid il-fond li ghandu n-numru 296. Dan jirrizulta mir-rikors li pprezenta quddiem l-ewwel Qorti fejn sahansitra fit-talba tieghu sabiex jinghata lura l-pussess effettiv hu jsemmi biss dan il-fond. Fir-rapport tieghu a fol 604 il-perit

tekniku l-AIC Mario Cassar jaghmel riferenza ghaz-zewg fondi, jigifieri dak bin-numru 296 u dak bin-numru 295, li flimkien jaghmlu l-hanut maghruf bl-isem 'McBailey'. Izda l-periti nkarigati *ex parte* ghamlu stima tal-valur lokatizju u qasmu bin-nofs il-valur lokatizju li rrizulta mill-kalkolazzjoni taghhom. L-ewwel Qorti mbaghad fis-sentenza taghha[16] taghmel riferenza ghal *'… hanut sitwat fil-parti ta' fuq ta' Triq ir-Repubblika, Valletta …'.* Ghalhekk sewwa jghid l-intimat Avukat Generali li l-ewwel Qorti kienet zbaljata meta hadet in konsiderazzjoni l-valur lokatizju taz-zewg fondi flimkien, jigifieri dak ta' €86,540.

39. Filwaqt li l-intimat Avukat Generali qed isostni li l-kumpens kellu jkun ferm anqas ukoll minhabba l-fatt li ma kienx jirrifletti l-kazistika ricenti, ir-rikorrent Apap Bologna qed jippretendi li dan kellu jkun hafna oghla minn dak stabbilit mill-ewwel Qorti. Avukat Generali jghid li l-ewwel Qorti hawn kienet wettqet it-tieni zball fis-sentenza taghha ghaliex iddikjarat li ma kienx hemm sentenzi moghtija minn din il-Qorti dwar kirjiet kummercjali li kienu jixbhu l-kaz odjern. Hu ghamel riferenza ghal zewg sentenzi moghtija minn din il-Qorti. Wahda minnhom fl-ismijiet **Vincent Curmi nomine v. Avukat Generali et** moghtija fl-24 ta' Gunju, 2016, fejn il-fatti kienu jirrigwardaw l-fond fejn kien hemm il-fergha tal-Bank of Valletta plc fi Pjazza San Gorg, il-Belt Valletta, fejn il-valur lokatizju kien gie stmat ta' €159,350 fis-sena u l-kumpens likwidat

[16] Pagna 71.

minn din il-Qorti kien ta' €25,000. It-tieni wahda li jsemmi l-intimat Avukat Generali hi s-sentenza tat-2 ta' Marzu, 2018, fl-ismijiet **Philip Testaferrata Bonici et v. Direttur Akkomodazzjoni Socjali et** fejn il-fatti kienu dwar rekwizizzjoni ta' Palazz f'Hal Balzan fejn parti kien jintuza minn Maltapost plc u partijiet ohra minn dipartimenti tal-Gvern. Hawn il-valur lokatizju kien stmat ta' €127,700 u l-kumpens likwidat minn din il-Qorti lehaq il- €50,000. Fil-kaz odjern il-valur lokatizju hu stmat ta' €86,540 ghaz-zewg fondi flimkien, filwaqt li l-kumpens gie likwidat mill-ewwel Qorti fl-ammont ta' €100,000 ukoll ghaz-zewg fondi flimkien. Din il-Qorti tosserva li tenut kont tal-fatt li qeghda taccetta li l-ewwel Qorti kienet zbaljata meta qieset il-fond 295 flimkien mal-fond 296 meta llikwidat il-kumpens dovut lir-rikorrent Apap Bologna fir-rigward ta' ksur tad-drittijiet tieghu tat-tgawdija tal-fond 296, din il-Qorti se tqis dan il-fattur fil-likwidazzjoni tad-danni.

40. Fid-decizjoni taghha fl-ismijiet **Zammit and Attard Cassar v. Malta**[17] **,** ukoll citata mill-ewwel Qorti, il-Qorti Ewropea osservat:

> *"… 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*

[17] Supra.

> *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, § 50, 17 July 2008).”*

41. Fil-kaz odjern ma jirrizultax li l-fond kien qed jintuza ghal xi gid socjali jew sabiex jigi evitat li l-inkwilin jispicca bla dar u ghalhekk il-Qorti tikkunsidra li l-interess pubbliku, jekk dan forsi xi darba kellu valur oghla, illum mhux daqstant impellenti. Ghalhekk din il-Qorti ma ssibx li ghandha tikkunsidra gustifikata d-differenza qawwija bejn il-kera li hu ntitolat ghaliha r-rikorrent Apap Bologna skont il-ligi vigenti u dik li ghandu jkun intitolat li jircievi skont is-suq hieles. Hawn il-Qorti tixtieq izzid li l-kera fuq is-suq hieles isservi biss biex tghin lill-Qorti tasal kemm ghal decizjoni jekk hemmx ksur, kif ukoll ghall-ammont ta’ kumpens li jista’ jkun dovut. Ghalhekk l-ezercizzju mhux wiehed matematiku fejn qeghdin jigu kkalkolati danni civili. Izda bl-ebda mod ma jista’ jigi accettat li l-indici tal-inflazzjoni ghandha tkun gwida lill-perit li jaghmel l-istima tal-valur lokatizju ghaliex l-indici tal-inflazzjoni ma kellhiex rizultati gusti meta applikata skond il-ligi. Id-diskrepanza hi tant qawwija li minghajr dubju din trid tkun riflessa fil-kumpens li ghandu jigi likwidat.

43. Izda ghandu jinghad li l-Qorti ma tistax tillikwida kumpens skond kif qed jippretendi r-rikorrent Apap Bologna. Ir-risposta ta’ dan insibuha

fis-sentenza tal-ewwel Qorti fejn din tghid li l-kumpens li jista' jinghata f'proceduri ta' natura kostituzzjonali mhux ekwivalenti ghal danni civili li jigu likwidati mill-qrati ordinarji.

43. Issir referenza in propositu ghas-sentenza tal-5 ta' Lulju 2011, fl-ismijiet **Victor Gatt et v. Avukat Generali, u Maltapost plc** (C22796)[18], fejn din il-Qorti ghamlet is-segwenti osservazzjonijiet relevanti f'materja ta' kumpens:

> "Dwar *just satisfaction*, ir-regola hija li meta l-Qorti ssib li hemm vjolazzjoni, sa fejn hu possibbli, l-istat ghandu jipprovdi ghal *restitutio in integrum*. Meta dan ma jkunx possibli jew inkella jkun biss parzjalment possibli l-Qorti ghandha taghti *just satisfaction*. Id-decizjoni li d-dikjarazzjoni ta' vjolazzjoni wahedha tkun bizzejjed hija l-eccezzjoni u ghandha tkun riservata ghal kazijiet fejn hemm rimedju jew konsegwenzi huma zghar. Fil-kazijiet l-ohra fejn il-lezjoni hija aktar serja l-Qorti ghandha taghti kumpens pekunjarju ghal dik il-vjolazzjoni.
> …
> Kif inghad fis-sentenza *Amato Gauci v. Malta* deciza fil-15 ta' Settembru 2009, "*Under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied* (ibid., § 249). ……..(para 80)."

44. Il-Qorti tosserva li l-kawza odjerna mhiex wahda ghal danni civili izda ghal dikjarazzjoni ta' ksur tad-drittijiet fondamentali tal-bniedem u ghar-rimedju legittimu li jidhrilha gust u xieraq fic-cirkostanzi biex jigi assigurat l-waqfien tal-lezjoni u r-*restitution in integrum* safejn huwa

[18] Q.Kost. 55/2009.

possibbli – mhux kif qed jippretendi r-rikorrent Apap Bologna li jinghata f'kull kaz - inkluz kumpens monetarju ghal tali ksur. Hu ben stabbilit fil-gurisprudenza ta' dawn il-Qrati li rimedju kostituzzjonali ma jfissirx necessarjament ir-rimbors tal-valur shih fuq is-suq lis-sid[19]. Dan ghal diversi ragunijiet li din il-Qorti fissret kif gej fis-sentenza fl-ismijiet **Josephine Azzopardi pro et noe v. Onor. Prim'Ministru et[20]:**

> *"Jigi osservat li l-kalkoli tal-attrici ma jqisux il-ghan legittimu u socjali tal-ligi, il-fatt illi l-ligi tehlisha mill-obbligazzjoni tat-tiswijiet, il-fatt li fost ir-rimedji hemm dak li jippermettilha tfittex li tiehu lura l-fond bla ma tinzamm milli taghmel hekk b'applikazzjoni tal-Art. 12A tal-Kap. 158, u l-fatt illi l-Art. 1 tal-Ewwel Protokoll ma jiggarantix dhul daqskemm jaghti s-suq hieles. Qieghda tassumi wkoll illi kienet sejra ssib min jikri l-appartament ghaz-zmien kollu li ghalih qieghda tippretendi kumpens, u wkoll mill-2002, u li dan il-kerrej kien sejjer jassumi hu l-obbligazzjoni ta' manutenzjoni u tiswijiet.".*

45. Ghalhekk l-argument tar-rikorrent Apap Bologna huwa insostenbbli ghaliex ma jiehux in konsiderazzjoni c-cirkostanzi kollha tal-kaz. Kif gie ritenut fis-sentenza ta' din il-Qorti deciza fil-31 ta' Ottubru, 2014, fl-ismijiet **Igino Trapani et v. Kummissarju tal-Artijiet u Avukat Generali[21]**, kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Fil-kaz odjern, l-ewwel Qorti ma jistax jinghad li naqset milli taghmel dan l-ezercizzju ghaliex elenkat diversi fatturi[22] li ghandhom jittiehdu in

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19 Q. Kost. 1/2017, **Chemimart Ltd (C74) v. Avukat Generali et,** deciz 14 ta' Dicembru, 2018.

20 Q. Kost. 80/14 deciz 25 ta' April, 2018.

21 Q.Kost. 37/2012.

22 Pagna 67.

konsiderazzjoni. Din il-Qorti tikkondividi mar-ragunament tal-ewwel Qorti u ma ssib xejn x'izzid fir-rigward.

46. Il-Qorti qeghda ssib li l-ewwel aggravju tal-intimat Avukat Generali hu gustifikat f'parti minnu, u ghalhekk qeghda tilqghu fejn jissottometti li l-Qorti kienet zbaljata meta sabet ksur fir-rigward tal-proprjetajiet li jgibu n-numri rispettivi 295 u 296 filwaqt li l-ewwel aggravju tar-rikorrent Apap Bologna mhux gustifikat u ghalhekk qed jigi michud. Meqjusa dawn il-fatturi kollha,il-Qorti hija tal-fehma li rimedju xieraq ghad-danni jkun fl-ammont ta' €50,000 f'danni pekunjarji u €5,000 danni mhux pekunarji.

It-tieni aggravju tar-rikorrent Apap Bologna: [ghandu jinghata lura l-pussess effettiv tal-fond]

47. Din il-Qorti hi tal-hsieb li l-intimati Flores ma jistghux jithallew ikomplu jgawdu mill-jeddijiet ta' inkwilinat taht il-Kap. 69 ghaliex b'hekk il-Qorti tkun qeghda thalli tiehu effett dik il-ligi li tinstab li hi inkonsistenti mal-Kostituzzjoni u mal-Konvenzjoni. Ir-rikorrent Apap Bologna ghalhekk ghandu ragun meta jissottometti fl-appell tieghu li *"Flok ittemm stat ta' ksur tad-drittijiet fondamentali, il-Qorti tkun qieghda tippermetti li jitkompla bil-kondizzjoni tal-hlas tad-danni'.* Hawn il-Qorti taghmel

referenza ghal sentenza taghha fl-ismijiet **Dr. Cedric Mifusd et vs. Avukat Generali**[23] kif ukoll citata mir-rikorrent Apap Bologna, fejn qalet:

> *"…d-danni li tista' tillikwida l-qorti huma d-danni li ġarrbu l-atturi sallum; ma tistax tagħti danni għall-ġejjieni għax ma tafx dan l-istat ta' inkonsistenza mad-drittijiet u l-libertajiet fondamentali kemm sejjer idum. Dan qalitu wkoll il-Qorti Ewropea fil-każ fuq imsemmi ta' Amato Gauci: "Under Article 41 of the Convention the purpose of awarding sums by way of just satisfaction is to provide reparation solely for damage suffered by those concerned to the extent that such events constitute a consequence of the violation that cannot otherwise be remedied. It is therefore not for the Court to quantify the amount of rent due in the future."*
>
> *40. Għalhekk, jekk tordna biss il-ħlas ta' danni u tħalli illi l-liġi jkompli jkollha effett, il-qorti tkun qiegħda effettivament tippermetti li jkompi jtul fiż-żmien stat ta' anti-kostituzzjonalita, bil-ħtieġa li l-atturi jiftħu kawża kostituzzjonali perjodikament biex jieħdu l-kumpens għall-ksur li jkompli jġarrbu mill-aħħar sentenza 'l quddiem. Flok ittemm stat ta' ksur tad-drittijiet fondamentali, il-qorti tkun qiegħda tippermetti li jitkompla bil-kondizzjoni tal-ħlas ta' danni, meta dak li jridu l-liġijiet li jħarsu d-drittijiet fondamentali hu li dawk id-drittijiet jitħarsu tassew, u mhux ikomplu jinkisru basta jitħallsu danni, bħallikieku l-ħlas tad-danni huwa liċenza għall-ksur kontinwat tad-drittijiet fondamentali.".*

48. Ghalhekk sabiex ir-rimedju tal-ksur ikun effettiv, dan ma jistax ikun ghajr dak mahsub fl-Artikolu 6 tal-Kostituzzjoni u fis-subartikolu 3(2) tal-Att dwar il-Konvenzjoni Ewropea [Kap. 319], jigifieri li l-Qorti tiddikjara li safejn il-ligi hi nkonsistenti, din m'ghandiex ikollha effett. Dan ifisser li l-intimati Flores mhux ser igawdu mill-konsegwenza tal-ligi ineffettiva, b'mod li huma ma jistghux jistriehu aktar fuq dik il-ligi sabiex jivvantaw xi dritt fuq il-proprjeta` in kwistjoni fil-konfront tar-rikorrent. Dan qed jinghad ghax, filwaqt li l-Qorti tafferma l-insenjament taghha li

[23] App. Kost. 34/2010 deciz 31 ta' Jannar, 2014.

ghalkemm il-Kostituzzjoni kif ukoll l-imsemmi Kap.319 jipprovdu ghal diskrezzjoni wiesgha ferm fejn jirrigwarda r-rimedju sabiex jigi zgurat it-twettiq tad-drittijiet fundamentali tal-bniedem, huwa opportun li ordni ta' zgumbrament tinghata mill-qrati kompetenti li ghandhom appozitament il-kompetenza jiddeciedu din il-materja bl-applikazzjoni tal-ligijiet ordinarji. L-istess ikkonkludiet[24] l-ewwel Qorti wara diversi riferenzi ghall-gurisprudenza ta' din il-Qorti u tal-Qorti Ewropea, u ghalhekk din il-Qorti qeghda tikkondividi l-hsieb taghha u tirrikonoxxi li sewwa jghid l-intimat Avukat Generali li din il-Qorti mhiex il-forum kompetenti filwaqt li hazin jargumenta r-rikorrent Apap Bologna li minghajr ordni ta' zgumbrament hu ma jkunx inghata rimedju shih.

49. In vista tal-posizzjoni ta' din il-Qorti fir-rigward tat-talba tar-rikorrent Apap Bologna ghall-izgumbrament tal-fond numru 296, din il-Qorti tastjeni milli tikkunsidra u tiddeciedi dwar l-aggravju tal-intimati Flores li l-fondi 295 u 296 kienu jaghmlu proprjeta` wahda soggetta ghal kirja wahda, u ghalhekk huma ma setghux jigu zgumbrati minn wiehed minn dawn il-fondi biss.

50. Ghal dak li jirrigwarda il-pretensjoni tal-intimati Flores li l-Qorti ghandha thares ukoll id-drittijiet fondamentali taghhom meta tasal ghad-decizjoni taghha, din il-Qorti tosserva li, filwaqt li mhijiex il-funzjoni

[24] Pagna 64.

taghha li tidderigi lill-intimati Flores kif dawn ghandhom jirregolaw ruhhom sabiex huma jassiguraw li d-drittijiet fundamentali taghhom ma jinkisrux, tirrileva li l-pretensjoni taghhom ma tistax titressaq quddiem dawn il-qrati bhala aggravju f'appell kontra sentenza appellata deciza kontrihom u li tkun tat lill-vittma rimedju adegwat u effettiv u wkoll sabiex tipprevjeni milli l-lezjoni riskontrata minnha milli tkompli ssehh. Hija opportuna, fir-rigward l-osservazzjoni maghmula minn din il-Qorti fis-sentenza taghha fl-ismijiet **Concetta sive Connie Cini vs. Eleonora Galea et**[25] fejn spjegat li din il-Qorti ma setghetx toqghod lura milli tiddikjara sejbien ta' ksur tad-drittijiet fondamentali u wkoll milli taghti rimedju skond il-ligi, minhabba l-effetti socjali li din tista' ggib:

> *"43. Din il-Qorti tosserva li l-promulgazzjoni ta' ligijiet intizi li jindirizzaw l-ezigenzi socjali hija ta' kompetenza tal-Legislatur, filwaqt li l-qrati vestiti bil-kompetenza Kostituzzjonali ghandhom id-dmir li, meta jkunu hekk imsejha minn xi parti, jezaminaw dawk il-ligijiet fid-dawl ta' dak li tghid il-Kostituzzjoni u l-Konvenzjoni. Ghalhekk il-kompitu tal-qrati huwa li jezaminaw il-ligi f'qafas Kostituzzjonali u Konvenzjonali, u fejn isibu lezjoni ta' dritt fondamentali ghandhom il-poter-dover li jiddikjaraw is-sejba ta' tali lezjoni, u jaghtu rimedju adegwat*[26] *fil-kaz partikolari, izda zgur li m'ghandhomx is-setgha jew id-dmir li jevitaw milli jiddikjaraw sejba ta' vjolazzjoni ta' drittijiet fondamentali unikament minhabba l-effetti socjali li tali dikjarazzjoni jista' jkollha.".*

51. Ghar-ragunijiet imfissra, din il-Qorti ma ssibx li t-tieni aggravju tar-rikorrent Apap Bologna hu gustifikat u ghalhekk qeghda tichdu.

[25] App. Civ. Nru. 23/2011, deciz 31 ta' Jannar, 2014.
[26] Sottolinear ta' din il-Qorti

Spejjez.

It-tielet aggravju tar-rikorrent Apap Bologna [ma kellux ibati l-ispejjez]

It-tielet aggravju tal-intimati Flores [m'ghandhomx ibatu l-ispejjez]

52. Ir-rikorrent Apap Bologna jsostni li l-ebda parti mill-ispejjez tal-procedura ma kellhom jigu allokati lilu meta nstab ksur tad-drittijiet fondamentali tieghu, u dan minkejja li nstabet lezjoni taht il-Konvenzjoni izda mhux taht il-Kostituzzjoni. Ir-rizultat tad-decizjoni tal-ewwel Qorti kien iwassal ghat-tnaqqis fil-kumpens li dik l-ewwel Qorti kienet illikwidat favurih u allura ghal rimedju li ma kienx effettiv. Hu sahansitra jiccita dak li qalet il-Qorti Ewropea fid-decizjoni taghha fl-ismijiet **Apap Bologna v. Malta**[27] **.** Min-naha tieghu l-intimat Avukat Generali jghid li galadarba ma nstabx ksur kostituzzjonali izda ksur konvenzjonali biss, allura kien xieraq li jbati l-ispejjez gudizzjarji marbuta ma' din it-talba.

53. Din is-sottomissjoni tal-intimat Avukat Generali ghandha tittiehed in konsiderazzjoni fid-dawl tal-ewwel talba tieghu mressqa fir-rikors tal-appell, jigifieri fejn talab li s-sentenza tal-ewwel Qorti ghandha tigi kkonfermata fejn din ma sabitx ksur tal-jeddijiet fondamentali tar-

[27] App. 46931/12, deciza 30 ta'Awissu, 2016.

rikorrent Apap Bologna taht l-Artikolu 37 tal-Kostituzzjoni. L-ewwel Qorti kienet sabet li l-ligijiet relattivi ghall-mertu tal-kawza odjerna kienu saru qabel it-3 ta' Marzu,1962. Accettat li kienu saru xi emendi ghal dawk il-ligijiet izda ma tressqet l-ebda prova li dawn kienu jaqghu taht xi wiehed mill-paragrafi (a) sa (d) tas-subartikolu 47(9) tal-Kostituzzjoni. Stante li dan is-subartikolu kien ghamel eccezzjoni fejn jirrigwarda ksur tal-ligijiet in kwistjoni, ma setax f' dan il-kaz jigi pretiz b'success ksur tal-Artikolu 37 tal-Kostituzzjoni.

54. Din il-Qorti taqbel mal-ewwel Qorti. Tenut kont tal-fatt li t-talbiet tar-rikorrent Apap Bologna ma gewx milqugha kollha mill-ewwel Qorti u wkoll din il-Qorti cahdet l-ewwel aggravju tieghu u wkoll it-tieni aggravju tieghu in parte, din il-Qorti ssib li l-apporzjonament tal-ispejjez tal-procedura ghandha tkun nofs kull wiehed bejn ir-rikorrent Apap Bologna u l-intimat Avukat Generali.

55. Ghalhekk filwaqt li tilqa' t-tielet aggravju tal-intimati Flores, din il-Qorti tichad it-tielet aggravju tar-rikorrent Apap Bologna.

Decide

Ghal dawn ir-ragunijiet il-Qorti tiddisponi mill-appell tar-rikorrent Apap Bologna, l-appell tal-intimat Avukat Generali u l-appell incidentali tal-intimati Flores billi tirriforma s-sentenza appellata kif ser jinghad:

(i) tikkonfermaha fejn sabet ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni;

(ii) tirrevokaha fejn ikkundannat lill-intimat Avukat Generali jhallas lir-rikorrent Apap Bologna s-somma komplessiva ta' €100,000 bhala kumpens pekunjarju u mhux pekunjarju u minflok, tikkundanna lill-intimat Avukat Generali jhallas lir-rikorrent Apap Bologna kumpens pekunjaru fis-somma ta' hamsin elf euro [€50,000] u kumpens non pekunjarju ta' hamest elef euro [€5,000] – b'kollox hamsa u hamsin elf euro [€55,000] - ghall-ksur tal-jedd tieghu mhares taht l-Artikolu 1 tal-Ewwel Protokoll;

(iii) tipprovdi dwar it-talba tar-rikorrent Apap Bologna ghall-izgumbrament tal-intimati Flores mill-fond numru 296 fi Triq ir-Repubblika, il-Belt Valletta, billi tghid li d-disposizzjonijiet tal-

Kap. 69 tal-Ligijiet ta' Malta huma bla effett fir-relazzjoni bejn l-istess rikorrent Apap Bologna bhala sid il-kera u l-intimati Flores bhala inkwilini, u ghalhekk l-intimati Flores ma jistghux jibqghu jinqdew b'dawk id-disposizzjonijiet tal-ligi bhala bazi legali ghal okkupazzjoni taghhom kontra r-rikorrent Apap Bologna;

L-ispejjez tal-appelli tar-rikorrent u tal-Avukat Generali jinqasmu nofs kull wiehed bejn r-rikorrent u l-intimat Avukat Generali, filwaqt li l-ispejjez tal-appell incidentali tal-intimat Karl Flores ikunu kollha a kariku tieghu. L-ispejjez tal-Ewwel Istanza jibqghu kif diga` decizi mill-istess Qorti.

Joseph Azzopardi Prim Imhallef	Giannino Caruana Demajo Imhallef	Noel Cuschieri Imhallef

Deputat Registratur
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