

**VALUATIONS PERTAINING TO PUBLIC PROPERTY
FROM CHAPTER 88 TO CHAPTER 573**

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79. (1) Whenever a value needs to be determined under this Act, this shall be done following a valuation made in terms of this article. If the valuation does not meet the precise requirements mentioned in this article, then the valuation shall be deemed to be invalid and hence should be done again.

(2) Every report or valuation made by *periti* appointed by the competent authority under this Act shall be done in accordance with one of the approved methodologies by the competent authority and in each report or valuation the *periti* should indicate which methodology they have used to reach their value. During the preparation of the report, *periti* may seek the aid of other experts in different areas, which aid shall then be indicated in their report.

(3) In any case, either when they are appointed by the competent authority or when they are appointed by the Arbitration Board, the report made by the *periti* shall include the following:

(a) the date of the valuation;

(b) the date with reference to which the property was valued;

(c) the state which it is calculated that the property was in on the date with reference to which the property was valued;

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(d) the use which was being made of the property on the date with reference to which it was valued, including information as to whether the property was at the said time subject to rights of third parties such as emphyteusis, use, usufruct or lease;

(e) **the comparable transactions, if any, with reference to which the property was valued;**

(f) the restrictions from the scheming in accordance with the local plans and, or other pertinent reasons;

(g) the method which made them reach such valuation; and

(h) the Declaration of the *periti* and also other experts involved in the valuation, in accordance with the previous subarticle, that they do not have any conflict of interest on the date of valuation;

(4) One report by three *periti* appointed by the competent authority should always be done when the land to be disposed of by the competent authority has a value exceeding four hundred thousand euro (€400,000).

(5) The fees of the *periti* appointed externally by the competent authority shall be calculated in accordance with Tariff K of the Code of Organization and Civil Procedure, provided that the individual fees of each *Perit* shall not exceed the amount of two thousand and five hundred euro (€2,500) for each report.

(6) The fees of the *periti* appointed by the competent authority shall be borne by the person who acquired the title over Government land.

Rapport

Ir-rapport irid isir bil-Malti

Kap 88 – REGOLA GENERALI

Skont l- **Artikolu 27 (1)(b)(i)** tal- **Kap. 88** tal- **Ligijiet ta Malta, il-valur tal-art ghandu jkun stabbilit fid-data tan-Notifika tad-Dikjarazzjoni tal-President.**

EZEMPJU: Permezz ta' ittra ufficjali datata 14 ta' Frar 2014, il-Kummissarju tal- Artijiet gharraf lill-esponenti bl-Avviz Numru 641 fil-Gazzetta tal-Gvern tal-14 ta' Lulju 2010... MELA f'dan il-kaz, l-valur tal-art ghandu jittiehed fid-data tal-14 ta' Frar 2014.

Kap 88 – PERO Meta tkun harget dikjarazzjoni qabel 5/3/2003 u l- Avviz ghall- Ftehim hareg wara l-1 ta' Jannar 2005

.....għandu, bla ħsara għal kull imgħax li jkun dovut sal-
pagament taħt l-**Artikolu 12(3)**, ikun il-valur tagħha kif ikun fl-
1 ta' Jannar 2005.....

Stima ta' art
esproprijata qabel l-
2003.
Miżjud:
l. 2006.5.

18A. Minkejja kull disposizzjoni oħra ta' din l-Ordinanza jew ta' xi ligi oħra, il-valur ta' xi art -

- (a) li fl-1 ta' Jannar 2005 tkun fil-proċess li tigi akkwistata;
- (b) li dwarha tkun inħareġ dikjarazzjoni taħt l-artikolu 3 qabel il-5 ta' Marzu 2003; u
- (c) li dwarha ma jkunx inħareġ avviz għall-ftehim qabel l-1 ta' Jannar 2005 taħt id-disposizzjonijiet ta' din l-Ordinanza kif fis-sehħ qabel id-data msemmija f'dan il-paragrafu,

għandu, bla ħsara għal kull imgħax li jkun dovut sal-pagament taħt l-artikolu 12(3), ikun il-valur tagħha kif ikun fl-1 ta' Jannar 2005.

Effett tad- Dikjarazzjoni

Il-kwalita' tal-art (il- 'kriterji għall- kumpens') għandha tigi 'ffrizata' meta ssir l-ewwel darba d-dikjarazzjoni tal-espropriu. (Ara f'dan is-sens **Mary Josephine Gauci et. vs Direttur tal-Artijiet** mogħtija mill-Qorti ta' l- Appell nhar it- 28 ta' April 2017).

KAP 88 - KRITERJI KWALITA ART - QABEL 14 FRAR 2006

QABEL L-EMENDI TA' L-2006: F'dan l-imsemmi perijodu, il- kriterji kienu purament ibbazati fuq jekk l-art hijjex wahda **agrikola** jew **fabrikabbli**. Jekk ma jirrizultawx 'fatturi ohra' ezistenti dakinhar ta' l-espropriju, u li huma rilevanti ghall-istima tal-art, allura l-art trid tigi stmata bhala **art raba jew moxa semplici**.

KAP 88 - KRITERJI KWALITA ART - QABEL 14 FRAR 2006

"built-up area" means any area which for a continuous stretch of one hundred and thirty-seven metres of its frontage on either side of the street, if the street is developable on both sides, or two hundred and seventy-four metres if the street is developable on one side only, is at least fifty *per centum* occupied by buildings;

137 m

274 m

KAP 88 - KRITERJI KWALITA ART - QABEL 14 FRAR 2006

Valuation of land
not being a
building site.
Amended by:
XXXI, 1947.7.

Building sites.
Substituted by:
XXVII, 1956.6

X

17. Any land which is not a building site shall be valued for the purpose of determining the compensation payable in the case of its compulsory acquisition as rural land or as waste land, as the case may be.

18. (1) Land shall be deemed to be a building-site for the purposes of this Ordinance if it has a frontage on an existing street and is situated within a built-up area or, subject to subarticle (2), within a distance of not more than ninety-one and one-half metres of a built-up area, measured along the axis of the street.

(2) In determining whether land is a building-site by reason of the fact that it is situated within a distance of not more than ninety-one and one-half metres of a built-up area regard shall be had to the probable immediate expansion of the built-up area in the direction of the land in question.

(3) Land falling within the definition of subarticle (1) or (2) shall be deemed to be a building-site to a maximum depth of twenty-five metres.

KAP 88 - KRITERJI KWALITA ART - WARA 14 FRAR 2006

WARA L-EMENDI TA' L-2006: F'dan l-imsemmi perijodu, il-legislatur ried li fil-valur, jittiehed *“kont tal-potenzjal li kellha l-istess art, fis-sens ta' x'tip ta' zvilupp jew uzu seta' jsir fuq dik l-art”*

KAP 88 - KRITERJI KWALITA ART - WARA 14 FRAR 2006

18. (1) Art, hlief bini storiku, ghandha titqies li tkun art għall-bini għall-finijiet ta' din l-Ordinanza jekk tkun ġewwa l-limiti ta' skema ta' bini jew art li tkun indikata u approvata għall-iżvilupp fi Pjan ta' Struttura jew pjan sussidjarju li ġie adottat u li jkun fis-seħh minn żmien għal żmien taht xi liġi dwar l-ippjanar.

Artijiet tajbin
għall-bini.
Sostitwit:
XXVII. 1956.6;
I. 2006.4.
Emendat:
XXI. 2009.5.

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[**KAP. 88.** *AKKWIST TA' ARTIJET GĦAL SKOPIJET PUBBLIĊI*

(2) Fid-deċiżjoni dwar kumpens dovut għal art għall-bini, għandu jittiehed qies tal-użu jew l-iżvilupp li jkun jista' jsir fuq jew dwar dik l-art skont id-disposizzjonijiet tas-subartikolu (1).

Kawzi pendententi quddiem I-LAB

Meta s-sidien ma' talbux illi l-proceduri odjerni jigu decizi skond id-disposizzjoni tal- **Kap. 573** tal-**Ligijiet ta' Malta** intitolat **Att Dwar Artijiet tal-Gvern** illi dahal *in vigore* fil-25 ta' April 2017, *a tenur* ta' l-**Artikolu 78** ta' l-istess **Kap. 573**.....il-proceduri odjerni “*ghandhom jkunu regolati bil-ligijiet sostantivi li kienu fis-sehh qabel il-bidu fis-sehh*” tal-**Art. 573**, jigifieri *a tenur* ta' **Ordinanza Dwar l-Akkwist ta' Artijiet ghal-Skopijiet Pubblici (Kap. 88)**;

KAP 573

KAP 573 – Kif jinhadem il-valur f'kaz ta' (i) xiri b'mod assolut u (ii) pussess u uzu

L- Artikolu 61 jghid hekk:

- (1) Il-Bord tal-Arbitraġġ, meta jiġi biex jiffissa l-kumpens f'kaz ta' **xiri b'mod assolut**, għandu josserva dawn ir-regoli:
 - ebda żjeda m'għandha tingħata minħabba illi l-akkwist ikun obligatorju;
 - il-valur tal-art għandu jittieħed li hu l-ammont illi l-art tista' ġġib kieku tiġi mibjugħa fis-suq minn sidha **volontarjament**;
 - il-valur tal-art huwa l-valur illi jkollha **l-art fiż-żmien tal-pubblikazzjoni tad-dikjarazzjoni** kif aġġornat mas-snin skont l-indiċi ta' inflazzjoni ppubblikat fl-iskeda tal-Ordinanza li Tneħħi l-Kontroll tad-Djar, u **mingħajr ma jittieħed qies ta' benefikati jew xogħlijiet magħmulin jew mibnija minn xi awtorità kompetenti; (allura mhux aktar id-data tal-iftira uffjċjali tal-Kummissarju ta' l-Artijiet kif għidna fi SLIDE 5)**
- (2) Meta l-kumpens li għandu jkun iffissat ikun għall-**pussess u uzu** biss, **l-ammont ta' kera ta' akkwist għaž-żmien kollu** li l-art sejra tkun miżmuma għandu jkun iffissat skont l-ammont illi l-art tista' ġġib kieku tiġi mikrija fis-suq minn sidha volontarjament;
- (3) Barra mill-imgħax li jinġema' fuq is-somma depożitata skont l-artikolu 52(1), il-Bord tal-Arbitraġġ jista' jordna fis-sentenza tiegħu li s-sid jieħu mgħax sempliċi bir-rata ta' tmienja fil-mija fis-sena fuq il-kumpens finali li jiġi likwidat mill-Bord liema mgħax għandu jibda għaddej minn meta s-sid ikun ressaq ir-rikors tiegħu skont l-artikolu 55."

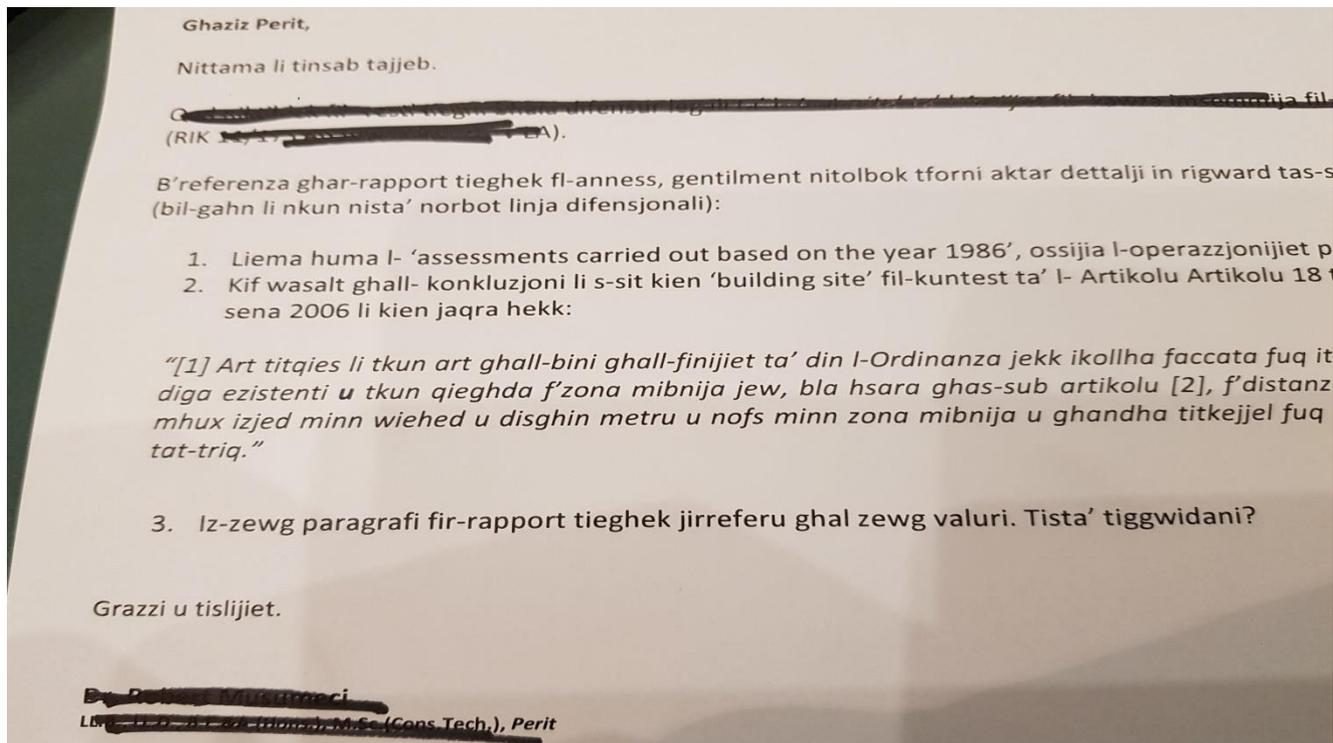
KAP 573 – ir-rapport...

- “Meta jitqabbd u periti mill-awtorità kompetenti u kemm meta jitqabbd mill-Bord tal-Arbitraġġ, ir-rapport peritali għandu jinkludi...ir-restrizzjonijiet li joħorġu mill-iskemar skont il-pjani lokali u, jew raġunijiet pertinenti oħra” (**Artikolu 79(3)(f)** tal- **Kap 573**);
- Il-valur irid jirrifletti “l-istat li l-proprjetà kienet fih fid-data li saret riferenza għaliha meta ġiet valutata l-proprjetà” (**Artikolu 79(3)(c)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “l-użu li kien qed isir mill-proprjetà fid-data li saret riferenza għaliha meta ġiet valutata l-proprjetà” (**Artikolu 79(3)(d)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “**l-operazzjonijiet paragonabbli, jekk ikun hemm, li l-proprjetà tkun ġiet valutata b’riferenza għalihom**” (**Artikolu 79(3)(e)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “jekk il-proprjetà kenitx fl-istess żmien suġġetta għal drittijiet ta’ terzi bħalma huma enfitewsi, użu, użufrutt jew kera” (**Artikolu 79(3)(d)** tal- **Kap. 573**).

KAP 573 – ir-rapport...

- “Meta jitqabbd u periti mill-awtorità kompetenti u kemm meta jitqabbd mill-Bord tal-Arbitraġġ, ir-rapport peritali għandu jinkludi...ir-restrizzjonijiet li joħorġu mill-iskemar skont il-pjani lokali u, jew raġunijiet pertinenti oħra” (**Artikolu 79(3)(f)** tal- **Kap 573**);
- Il-valur irid jirrifletti “l-istat li l-proprjetà kienet fih fid-data li saret riferenza għaliha meta ġiet valutata l-proprjetà” (**Artikolu 79(3)(c)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “l-użu li kien qed isir mill-proprjetà fid-data li saret riferenza għaliha meta ġiet valutata l-proprjetà” (**Artikolu 79(3)(d)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “**l-operazzjonijiet paragonabbli, jekk ikun hemm, li l-proprjetà tkun ġiet valutata b’riferenza għalihom**” (**Artikolu 79(3)(e)** tal- **Kap. 573**);
- Il-valur irid jirrifletti “jekk il-proprjetà kenitx fl-istess żmien suġġetta għal drittijiet ta’ terzi bħalma huma enfitewsi, użu, użufrutt jew kera” (**Artikolu 79(3)(d)** tal- **Kap. 573**).

Il-periti bhala prova ex parte



FIL-KAZ TAL-KAP 88

SAQSI:

- DIKJARAZZJONI QABEL 2003 U AVVIZ WARA 2005? (JEKK IVA, VALUR 2005) - KRITERJI DEJEM SKONT IL-LIGI DAK IN-NHAR TAD-DIKJARAZZJONI
- DIKJARAZZJONI WARA 2003 (JEKK IVA, VALUR DATA TA' L-AVVIZ) - KRITERJI DEJEM SKONT IL-LIGI DAK IN-NHAR TAD-DIKJARAZZJONI

Ezempji

- **KAP 88 – Dikjarazzjoni 1987 (cioe qabel 2003) Avviz 2007 (cioe wara 2005)**

MELA: Kriterji QABEL 2006 (ghaliex Dikjarazzjoni 1987 cioe' qabel 14 FRAR 2006, mela ARA SLIDES 8,9,10) - MELA, Valur tal-art 2005 (skont SLIDE 12)

- **KAP 88 – Dikjarazzjoni 2010 (cioe wara 2003) Avviz 2015**

MELA Kriterji WARA 2006 (ghaliex Dikjarazzjoni 2010 wara 14 FRAR 2006, mela ARA SLIDE 11) – Valur tal-art 2015

- **Kap 573 – Dikjarazzjoni 1987 Avviz 2007**

MELA 'il-valur li kellha l-art fis-sena 1987 kif aġġornat mas-snin skont l-indiċi ta' inflazzjoni ppubblikat fl-iskeda tal-Ordinanza li Tneħhi l-Kontroll tad-Djar, u mingħajr ma jittiehed qies ta' benefikati jew xogħlijiet magħmulin jew mibnija minn xi awtorità kompetenti'

Government and Ownership

327. (1) The Government is the owner of:

(a) all things which it acquires pursuant to the provisions of this Code or any other special law, herein referred to as "public property"; and

(b) all things forming part of the public domain, which it holds as a result of its sovereignty, herein referred to as "public domain".

(2) Vacant property belongs to the Government.

(3) Property belonging to the Government may be subject to private rights in the manner and to the extent stated in this Code and other special laws.

Letting of things

526. (1) The letting of things is a contract whereby one of the contracting parties binds himself to grant to the other the enjoyment of a thing for a specified time and for a specified rent which the latter binds himself to pay to the former.

BUT

21. (1) of Chapter 573 Despite any other law, the competent authority shall, at all times in the public interest, dissolve a contract of lease when the lease is made for a determined period of time which has not yet expired.

(2) The notice of dissolution of the lease shall be made through a judicial act that shall be served to the lessee.

ALSO

24. (1) Despite any other law, the competent authority may, at all times in the public interest, give notice by means of a judicial act, served to the lessee to dissolve the agricultural lease contract in the case where the lease is for a determined period that has not expired or to preclude the agricultural lease from being renewed according to the provisions of the Agricultural Leases (Reletting) Act.

Usufruct

I. OF THE RIGHTS OF THE USUFRUCTUARY Fruits belong to usufructuary.

332. The usufructuary has the right to take all kinds of fruits, whether natural, industrial, or civil, which the thing subject to his usufruct is capable of producing. Natural, industrial and civil fruits.

333. (1) Natural fruits are those which are the spontaneous produce of the soil. The produce and increase of animals and the produce of stone-quarries or of mines are also natural fruits.

(2) Industrial fruits of a tenement are those which are obtained by cultivation.

(3) Civil fruits are the rents of property let, emphyteutical ground-rents, interest on capitals, and annuities

Usufruct - Termination

378. Usufruct terminates –

(a) by the death of the usufructuary;

(b) by the expiration of the time for which it was constituted;

(c) by the merger or reunion in one and the same person of the two capacities of usufructuary and owner;

(d) by non-user of the right during thirty years;

(e) by the total loss of the subject of the usufruct.

Termination of usufruct by wrongful use thereof.

379. (1) Usufruct may also terminate by reason of the wrongful use which the usufructuary makes of his right, either by causing injury to the tenements, or by suffering them to run in to ruin for want of ordinary repairs.

(2) In any such case the court may, according to the gravity of the circumstances, instead of ordering the absolute termination Of the usufruct, either appoint an administrator, or order that the property be returned to the owner, subject to the condition, however, of paying annually to the usufructuary, or to those claiming under him, a fixed sum during the continuance of the usufruct.

Easements - Definition

402. (1) Easements created by law for purposes of public utility are established by special laws or regulations.

454. It shall be lawful for owners to establish, in accordance with article 400, any easement which is in no way contrary to public policy. Continuous or discontinuous, apparent or non-apparent easements.

455. (1) Easements are continuous or discontinuous, apparent or non-apparent.

Easements – how they are created

456. (1) Easements are, moreover, affirmative or negative.

(2) Affirmative easements are those which consist in the right of making use of the servient tenement.

(3) Negative easements are those which consist in the right of restraining the owner of the servient tenement from the free use thereof. Creation of continuous and apparent easements.

457. Continuous and apparent easements may be created -

(a) by virtue of a title;

(b) by prescription, if the tenement over which such easements are exercised may be acquired by prescription;

(c) by the disposition of the owner of two tenements. Title to result from public deed. Registration thereof.

458. The title creating an easement is null unless it results from a public deed; and where the easement is created by a deed inter vivos, the easement shall not be operative as regards third parties before the deed is registered in the Public Registry as provided in article 330, on the demand of any of the parties interested, or of the notary receiving the deed.

Easements – extinguished

479. (1) An easement is extinguished when the things subject thereto are in such a condition that it can no longer be exercised.

(2) Nevertheless, the easement will revive if the things are restored in such a manner that it can be again exercised, unless a period of time sufficient to raise a presumption of the extinguishment of the easement under article 481 shall have elapsed. by merger or unity of possession,

480. (1) An easement is extinguished where the dominant and the servient tenements become united in the ownership of one person.

(2) Where, however, a visible sign of an easement exists, and the owner disposes of one of the said tenements without there being in the contract any declaration as to the easement, such easement shall continue to be operative, actively or passively, in favour of, or over, the tenement so alienated. by non-user.

Amended by: L.N. 148 of 1975.

Easements – extinguished

481. (1) An easement is extinguished by non-user for the period of forty years, in the case of property belonging to the Government of Malta or to a church or other pious institution, and of thirty years, in the case of any other property.

(2) The provisions of this article shall not apply where the non-user was due to the conditions referred to in article 479 provided the owner of the dominant tenement could not, according to law, cause such conditions to cease. Running of periods of non-user.

482. The periods of non-user referred to in the last preceding article, shall begin to run, according to the different kinds of easements, either from the date of the last exercise thereof, if the easement is discontinuous, or from the date of the first act done in contravention thereof, if the easement is continuous.

Prescription

2107. (1) Prescription is a mode of acquiring a right by a continuous, uninterrupted, peaceable, open, and unequivocal possession for a time specified by law.

2114. Prescription does not take place in regard to things which are extra commercium. Things to which prescription applies.

Amended by: L.N. 148 of 1975.

2115. (1) Prescription applies to rights and actions vested in any person, institution, or body corporate, indiscriminately, as well as to property subject to entail.

(2) Nevertheless, prescription may not be set up against any right or action of the Government of Malta, except in the cases mentioned in articles 2149, 2153, 2154, 2155 and 2156.

Emphyteusis

494. (1) Emphyteusis is a contract whereby one of the contracting parties grants to the other, in perpetuity or for a time, a tenement for a stated yearly rent or ground-rent which the latter binds himself to pay to the former, either in money or in kind, as an acknowledgment of the tenure.

(2) The provisions of this Title shall apply to any emphyteusis whatsoever, even where the amount of the ground-rent shall have been fixed with reference to the value of the fruits of the tenement.

Emphyteusis

1501. (1) Where a grant in emphyteusis is made in perpetuity, the emphyteuta, even though the ground-rent may be revised at stated intervals of time, shall have the option to redeem the ground-rent as provided in the following sub-articles of this article, unless the contract itself, being a contract entered into before the 15th August, 1981, provides for a different manner in which the redemption may be effected.

(2) Such redemption of the ground-rent shall be made by the payment of a sum equivalent to the amount of the ground-rent capitalised at the rate of five per cent: Provided that where the contract provides that the ground-rent may be revised at a specified time or on the happening of a specified condition, the redemption may be opted for by the emphyteuta within the first year of the date of any such revision, or the happening of such condition, and the sum payable for the redemption of the ground-rent shall, in such case, be equivalent to the amount of ground-rent so revised capitalised at the average rate of interests payable by a commercial bank on deposits of a fixed nature at the time of the redemption.

Encroachment

Art 31H (ii) When the competent authority grants to a person the right to occupy a land by way of encroachment, it shall have the right to take it back whenever it wants and for any reason whatsoever and the person who benefits from the encroachment shall return the land immediately or return it by the given date, and the authority shall not be held responsible for any loss or damages suffered by that person in view of the termination of the encroachment.