



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn sittax (16) ta' Mejju 2016

Rikors Numru 116/14 FDP

Dr Simon Busuttil
(ID 242669M)

vs

Alessandro Mangion, bhala editur tal-gurnal 'L-Orizzont'
(ID 417172M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-4 ta' April 2014 fejn ir-rikorrenti, filwaqt illi ghamel referenza ghall-artikolu illi deher fil-harga tal-gazzetta l-Orizzont tat-28 ta' Marzu 2014 intitolat "**Trading in influence**", sahaq illi tali artikolu kien libelluz u malafamanti fil-konfront tieghu stante illi kien intiz sabiex joffendi l-unur u l-fama tieghu u jesponuh ghar-redikolu u disprezz tal-pubbliku.

Sahaq illi l-allegazzjonijiet illi saru, fosthom illi "*kull gvern ghandu jippreferi s-sistema tad-'direct orders', minflok dik tal-kompetizzjoni gusta, ghax b'hekk gvern jiddeciedi in hu l-izjed jew l-inqas kompetenti*", kif ukoll li l-attur kien involut f' "*... pratici dubjuzi u anke abuzivi*" u li l-attur "*... hu fid-dmir li jserrah ras il-poplu li la hu u lanqas il-kumpanniji tieghu qatt ma kienu involuti f'tali pratici abuzivi li jissejhu 'trading in influence'*", kienu lkoll libelluzi u malafamanti fil-konfront tieghu.

Ghalhekk, ir-rikorrent talab lill-Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tar-rikorrenti filwaqt illi tikkundanna lill-intimat ihallsu danni a tenur ta' l-Artikolu 28 tal-Kap 248.

Ra l-artikolu ossija editorjal tal-gazzetta l-Orizzont tat 28 ta' Marzu 2014, illi, taht titolu "**Trading in influence**" kien jghid kif gej:

Il-Kap tal-Opposizzjoni Dr Simon Busuttil jinsab bhalissa f'nofs kontroversja grassa mhux ta' xejn. Nafu kif inkixef li, fi zminijiet l-ahhar Gvernijiet Nazzjonalisti, il-kumpannija Europa Services & Consultancy tieghu ggwadanjat izjed minn miljun euro (s'issa) f'kuntratti ta' konsulenzji permezz ta' 'direct orders'. L-aktar sinjifikanti u li suppost ghandu jhammarlu wiccu hu l-fatt li ma kienx hu li firex il-karti fuq il-mejda, anzi, bil-kontra, kien il-Prim Ministru Dr Joseph Muscat li gharraf lill-pubbliku in generali b'dawn il-prattici dubjuzi u anke abbuzivi. Il-Kap "frisk" tal-PN m'ghandu ebda risposta ohra ghajr dik li l-kumpannija tieghu hadet tali konsulenzji ghax hi biss ghandha l-kompetenzi mehtiega. Issa din mhux biss hi skuza zoppa, izda sahanitra banali. Kieku, ghas-sahha tal-argument, kellna naccettaw il-verzjoni stramba tieghu, li kull Gvern ghandu jippreferi s-sistema tad-'direct orders', minflok dik ta' kompetizzjoni gusta, ghax b'hekk gvern jiddeciedi min hu l-izjed jew l-inqas kompetenti, Busuttil ikun qed iwaqqa' t-travu fuq saqajh.

Irrilevanti kemm jiswa d-'direct order', jekk huwa elf jew miljun ewro, li jghodd hu l-principju. Forsi wkoll ghalhekk li r-regoli amministrattivi jistabilixxu limitu ta' kemm jista jkun hemm 'direct order'. Kien anke dan il-principju li tal-PN saqu fuqu biex jikkritikaw lill-Gvern gdid Laburista meta ghazel lill-kumpannija statali Ciniza bhala s-sieheb strategiku tieghu biex jibda t-triq ghas-salvazzjoni tal-Enemalta, li l-istess Nazzjonalisti litteralment herrewha. U kemm kienu se jinstabu, bhat tieni l-akbar ekonomija fid-dinja, li jkunu lesti jinvestu mat-€320 miljun f'korporazzjoni li l-eks-Ministru Tonio Fenech inniffsu ried ibighha ghal ewro biss?! Il-verita' hi li, jghid x'jghid biex jipprova jehles xi ftit mid-dell tqil li nizel fuqu, Dr Busuttil mhux biss tilef kull kredibilita' politika, imma jaf li hu impossibli issa li jkollu xi awtorita' morali, li hi indispensabbli ghal kull politiku, aktar u aktar jekk fl-Opposizzjoni. Jekk hawn xi hadd li ma jistax jifja l-ewwel gebla, dan hu l-Kap tal-PN.

U din il-kwistjoni ta' thanzir bla razan permezz ta' 'direct orders' mill-Gvern tieghu stess, konvinti li hi biss il-qoxra tal-kejk li kif jinqasam ghandna ghalxiex niskantaw. Jesistu xnieghat ta' intricci bejn kumpanniji lokali li kisbu ghajnuniet u ghotjiet finanzjarji mill-Unjoni Ewropea ghall-klijenti taghhom, fejn allegatament twettqu abbuzi serji, tant li jekk ma kontx tqabba lill certi kumpanniji ma kien jirnexxilek qatt iggib tali finanzjar. Il-Kap tal-Opposizzjoni hu fid-dmir li jserrah ras il-poplu li la hu u lanqas il-kumpanniji tieghu qatt ma kienu involut ftali Prattici abbuzivi li jissejhu 'trading in influence'. Ghandu johrog stqarrija fejn jelenka l-operat kollu tieghu u d-dettalji tar-relazzjonijiet li kellu ma' negozzjanti Maltin u Ghawdxin sakemm kien Membru Parlamentari Ewropew.

Hu dmir ukoll tal-UE, li filwaqt li tghasses ghal kull tibna f'ghajnejn it-'traders in influence', tqalleb ukoll ghal travi li jinghad hemm f'ghajnejn xi hbieb ippreferuti taghha.

Rat l-eccezzjonijiet ta' l-intimat ippresentati fit-22 ta' Mejju 2014 fejn sahaq illi dak minnu miktub huwa biss taghrif ta' interess pubbliku li l-intimat, bhala editur, ghandu d-dmir illi jwassal il-messagg lill-qarrejja tieghu sabiex dawna jaraw jekk jaqlux jew le mieghu. Sahaq ukoll illi r-rikorrent, bhala Kap tal-Opposizzjoni, ghandu jkun miftuh ghal kritika, anke iebsa, u dana skond gurisprudenza nostrana kif ukoll Ewropea.

Rat l-affidavit ta' **Dr Simon Busuttil** ippresentat fil 15 ta' Lulju 2014.

Rat illi fit 13 ta' Ottubru 2014 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Rat l-affidavit ta' **Alessandro Mangion** ippresentat fl-14 ta' Meju 2015.

Semghet ix-xhieda in kontro ezami ta' Alessandro Mangion moghtija fil 25 ta' Gunju 2015.

Rat illi fis-26 ta' Novembru 2015 il-partijiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw u ghalhekk il-kawza thalliet ghat-trattazzjoni finali.

Semghet it-trattazzjoni finali ta' l-abbli difensuri tal-partijiet illi saret fl-14 ta' April 2016.

Ikkunsidrat

Jirrizulta, mill-provi prodotti illi fit-28 ta' Marzu 2014, il-gazzetta l-Orizzont, illi taghha l-intimat kien l-editor fiz-zmien illi meta inkiteb l-artikolu, kella editorjal intitolat "*Trading in influence*", liema artikolu kien indirizzat lejn ir-rikorrent, Dr Simon Busuttil, Kap tal-Opposizzjoni.

Jirrizulta, mill-assjem tal-editorjal kollu, illi l-artikolist ibbaza l-artikolu w il-kummenti tieghu fuq il-fatt illi, ftit taz-zmien qabel, kienet harget l-ahbar fuq il-media li l-kumpannija Europa Services & Consultancy Limited, li hija soċjeta illi fiha r-rikorrent ghandu sehem, u li taghti servizz ta' konsulenzji relatati ma' xoghol relatat mal-Unjoni Ewropeja, kienet, fiz-zmien illi l-Gvern kien qieghed jitmexxa mill-Partit Nazzjonalista, inghatat kuntratti ta' konsulenzji, inkluz permezz ta' "direct orders", fl-ammont ta' madwar €1,200,000.

Jirrizulta illi l-artikolist stqarr illi, fi zmien il-Gvern Nazzjonalista, kien hemm dak li sejjahlu "*thanzir bla razan permezz ta' 'direct orders'*" filwaqt illi sahaq li kien ben maghruf illi, fiz-zmien il-Gvern Nazzjonalista, sabiex tinghata finanzjament mill-Ewropa, kellek tqabbad certi kumpanniji, liema fatt huwa deskriba bhala "*trading in influence*", kif del resto kien intitolat l-artikolu, izda l-artikolist ma jsemmix minn kienu tali kumpanniji.

Jirrizulta illi, finalment, l-artikolist staqsa lir-rikorrent, bhala Kap tal-Opposizzjoni, sabiex "*jserrah ras il-poplu li la hu u lanqas il-kumpanniji tieghu qatt ma kienu involut f'tali pratici abbużivi li jissejhu 'trading in influence' "* kif ukoll sabiex "*jelenka l-operat kollu tieghu u d-dettalji tar-relazzjonijiet li kellu ma negożjanti Maltin u Ghawdxin sakemm kien Membri Parlamentari Ewropew.*"

Jirrizulta illi r-rikorrent hassu malafamat b'dak illi kien hemm miktub fl-artikolu u ghalhekk nieda l-proceduri odjerni.

Ikkunsidrat

Jirrizulta, mill-affidavit tar-rikorrent, illi huwa hassu aggravat bil-fatt illi kienu qed isiru allegazzjonijiet u insinwazzjonijiet serji fil-konfront tieghu fejn kien qed jigi suggerit illi huwa abbuza kemm mir-regoli professjonali tieghu kif ukoll illi kien kompartecipi f'agir kriminali, ossija dik ta' "*trading in influence*".

Jirrizulta, dejjem mill-affidavit tar-rikorrent, illi huwa hassu malafamat bil-fatt illi gie assocjat ma pratici illegali u kriminali bhalma huwa "*trading in influence*" u insista illi huwa qatt ma kien "*involut fi pratici dubjużi u anke abbużivi*" kif r-rikorrent hass illi l-intimati kienu qed jinsiwaw.

Jirrizulta wkoll illi r-rikorren qieghed joggezzjona ghal fatt illi l-intimat staqsieh sabiex jiddikjara d-dettalji tar-relazzjonijiet illi kellu ma negozjanti meta kien membri tal-Parlament Ewropew, liema rikjesta, jinsisti r-rikorren, "*jwassal f'imhuh in-nies ghal konkluzjoni li hemm xi haga mohbija fl-operat tieghi, xi haga suspettuza fl-istess hidma tieghi, relazzjonijiet dubjuzi u possibbilment kontra l-Ligi f'ghemili*".

Jirrizulta wkoll illi r-rikorren jikkontendi illi dak miktub ma setghax jitqies bhala "*semplici kritika politika, kif inhu mistenni f'socjeta demokratika, izda (kien) attakk fuq l-integrita' tieghi*." Ir-rikorren jikkontendi illi dak miktub kien intenzjonal sabiex "*jhammigni personalment u jhammiggi l-integrita' personali, professjonali u politika tieghu u b'hekk jidanneggjali l-karriera politika tieghi*." Kien ghalhekk, jikkontendi r-rikorren, illi huwa pprenta din il-kawza.

Ikkunsidrat

Jirrizulta, mill-banda l-ohra, mill-affidavit ta' l-intimat, illi l-editorjal kienet "*mibnija fuq il-kontroversja pubblika li nqalghet dwar il-kuntratti ta' madwar €1,2 miljun li nghatat il-kumpannija Europa Research & Consultancy Services Limited (ERCS Ltd) fuq perjodu ta' snin taht amministrazzjoni Nazzjonalisti, inkluzi kuntratti (ftit inqas minn nofshom) permezz ta' 'direct orders', Prattika li meta mhddma mill-awtoritajiet u permezz ta' fondi pubblici awtomatikament se tqajjem id-dubju ssir fejn issir*."

Jirrizulta illi l-intimat jikkontendi illi, meta ghamlu referenza ghax-xnieghat illi kumpanniji setghu operaw permezz ta' '*trading in influence*' b'rabta ma' ghoti ta' flus mill-Unjoni Ewropea, huwa jikkontendi illi "*tlabna b'mod lecit u lill Kap Nazzjonalista Simon Busuttil biex iserrah ras il-poplu Malti li l-kumpanniji tieghu qatt ma kienu involuti fi Prattici simili*."

Jirrizulta, finalment, illi l-intimat ghamilha cara li b'tali rikjesta huma ma kienu, bl-ebda mod qed "*nfissru li bhala stat ta' fatt hu (ir-rikorren) u/jew il-kumpanniji tieghu kienu involuti f'xi 'trading in influence'*." Di fatti, huwa jistqarr illi "*it-talba saret biss ghall-kjarifika ta' ghajdut li kien jorbot lill-pajjizna f'dan ir-rigward u li kien qed jiccirkola anke fil-kuraturi tal-istituzzjonijiet Ewropej*."

Ikkunsidrat

Id-difiza mqajjma mill-intimat kienet principalment dik ta' "*fair comment*" dwar ahbar illi dehret irrappurtata fil-media lokali u dwar persuna involuta fil-politika, bhalma huwa r-rikorren, li huwa Kap tal-Opposizzjoni, liema kritika setghet tkun oghla, u anke iebsa kif ukoll dwar id-dover illi huwa kellu, bhala gurnalist, illi jwassal ahbar lill-qarrejja sabiex jigi interpretat minnhom. Jenhtieg, ghalhekk, illi jigu kkunsidrati certi principji illi fuqhom dawna l-Qrati jibbazaw il-hsibijiet taghhom.

L-intimat jistqarr illi bhala editur, ossija gurnalist, huwa kellu d-dmir illi jgharraf lill-qarrejja tieghi bil-fatti. Dwar tali id-dritt, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret referenza ghall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciat serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li ghandu jitlahaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tieghu protetta, fejn qalet is-segwenti:-

78. *Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.*

Dwar il-pusizzjoni li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli biex tghid is-segwenti:

79. *The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".*

.....

Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)

81. *Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.*

Tali rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandha tigi bilancjata bi drittijiet u obbligi illi l-istess gurnalist, fil-qadi ta' dmirijietu, ghandu josserva u, di fatti, il-Qorti Ewropea, dwar tali doveri da' parte tal-gurnalist, tghid hekk:

82. *However, Article 10 § 2 of the Convention states that freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.*

Biex jigi vverifikat jekk intlahaqx bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fl-istess decizjoni fuq imsemmija, tghaddi biex issemmi sitt kriterji importanti illi ghandhom jitqiesu sabiex jigi assikurat li, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Dawna l-kriterji kif stabbiliti huwa s-segwenti:

(a) Contribution to a debate of general interest

90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest

(b) How well known is the person concerned and what is the subject of the report?

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.

Whilst in the former case the press exercises its role of “public watchdog” in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public’s right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person’s private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.

(c) Prior conduct of the person concerned

92. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.

(d) Method of obtaining the information and its veracity

93. The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.

(e) Content, form and consequences of the publication

94. The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.

(f) Severity of the sanction imposed

95. Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.

Filwaqt illi l-ahhar kriterju huwa aktar kriterju illi tadopera l-Qorti Ewropea sabiex tivverifika jekk decizjoni ta' qrati lokali jivvjolawx l-Art 10 tal-Konvenzjoni Ewropeja jew le, l-ewwel hames kriterji huma tali illi anke dina l-Qorti tista tapplikahom fil-kaz odjern.

Ghandu jigi osservat ukoll illi, kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Kif gie osservat fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, id-dritt tal-liberta' ta' l-espressjoni, li giet invokata mill-intimat, giet ikkunsidrata kif gej:

78. The fundamental principles concerning the question whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law and have been summarised as follows:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions,

which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

.....

79. Furthermore, the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

80. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.

81. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the “protection of the reputation or rights of others”, the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.

82. The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.

83. The Court has considered that where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed.

Tali principju kif fuq enuncjat reggha gie ripetut fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fejn intqal is-segwenti:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism

. Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

Fl-istess decizjoni, il-Qorti ghamlet is-segwenti osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

A fundamental distinction should be made between statements that are to be categorized as factual assertions and value judgments. In its contextual examination of the disputed statement as a whole, the Court must carry out its own evaluation of the impugned statement. Furthermore, the Court has acknowledged that the distinction between value-judgments and statements of fact may be blurred, and that the issue may need to be resolved by examining the degree of factual proof.

Dana l-argument huwa rifless anke fid-decizjoni illi l-istess Qorti kienet tat fil-kawza **Sizma vs Hungary** deciza f'Ottubru 2012 fejn intqal is-segwenti:

"The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be."

Dwar 'fair comment', imbghad, **Gatley on Libel and Slander** jghid:

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal is-segwenti :

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehrieg li min jistrieħ fuqha jseħhlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun għustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala

kritika u mhux żebliĥ, tgħajir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.

Tali tagħlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, Lord Phillips għamel is-segweni konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.

Ikkunsidrat

Jirrizulta, mill-provi kemm dokumentarji kif ukoll dawk tal-partijiet, li ma huwiex kkontestat li r-rikorrent għandu interessi fil-kumpannija Europa Services & Consultancy Limited, li dwarha l-intimat, bhala editur, tkellem u bbaza l-artikolu tiegħu fuq l-aħbar li kienet tirrigwarda konsulenzji illi ingħataw lill-istess kumpannija fi zmien meta l-Gvern kien immexxi mill-Partit Nazzjonalista.

Jirrizulta ukoll illi r-rikorrent ma kien qed jikkontesta l-veracita' tal-fatt illi s-socjeta Europa Services & Consultancy Limited setgħet "ggwdanjat izjed minn miljun ewro (s'issa) f'kuntratti ta' konsulenzji permezz ta' direct orders", kif kien qieghed jallega fl-editorjal tiegħu, u dana peress illi mkien, fl-affidavit tiegħu, ma r-rikorrent jishaq illi dana ma huwiex minnu.

Jirrizulta, madanakollu, illi r-rikorrent kien qieghed jikkontendi l-fatt illi saru kummenti dwaru illi setgħu, b'xi mod, jagħtu jifhmu lill-qarrejj illi huwa kien involut f'attivita kriminali magħrufa bhala 'trading in influence', liema allegazzjoni huwa caħad kategorikament u kienet il-bazi għaliex huwa nieda l-proceduri odjerni.

Jirrizulta illi huwa jishaq li tali kummenti jwasslu għal konkluzjoni fl-imhuh tan-nies illi hemm xi haga mohbija fl-operat tiegħu, liema haga suspettuza tista tagħti x'tifhem illi huwa seta kien involut f'attivita' illegali u kontra il-Ligi.

Jirrizulta, izda, illi l-intimat, fl-artikolu tiegħu, filwaqt illi jagħmel referenza għal xniegħat u għijdut relatati ma' kumpanniji, mhux imsemmija, illi setgħu operaw bl'utilizz ta' 'trading with influence' staqsa espressament lir-rikorrent sabiex jelimina kwalsiasi dubju illi seta kien hemm fuq ir-rikorrent rizultat ta' l-informazzjoni illi kienet harget dwar il-kumpannija illi tagħha huwa socju u "jserrah ras il-poplu li la hu u lanqas il-kumpanniji tiegħu qatt ma kienu involut f'tali pratici abusivi li jissejhu 'trading in influence' ".

Jirrizulta għalhekk, bl-aktar mod car, illi l-artikolu kif redatt ma kien qed jimputa ebda azzjoni kriminuza fuq ir-rikorrent, kif donna fehem l-istess rikorrent u minhabba f'hekk nieda l-proceduri

odjerni, izda kien qed jistieden lir-rikorrent sabiex jassikura lill kullhadd li la hu u lanqas il-kumpanniji tieghu ma kienu involuti f'tali attivita' illecita.

Jirrizulta, izda, illi r-rikorrent, flok ma irrisponda ghall-allegazzjonjiet illi saru u ghamel il-kjarifiki pubblikament, kif kienu gew lilu mitluba, kif kellu kull dritt illi jaghmel, qabad u nieda l-proceduri odjerni.

Ikkunsidrat

Jirrizulta, mill-fatti kif fuq ezaminati, illi l-elementi imsemmija fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** sopracitata, kif precedentement espressi mill-Qrati Inglizi u tal-ECHR, lkoll jesisitu, bir-rizultat illi dak miktub fl-artikolu ma jistax ma jitqiesx bhala '*fair comment*'.

Di fatti, ma hemmx dubju illi l-kumment kien ibbazat fuq fatti gia imsemmija u fid-dominju pubbliku, liema fatti jidher illi huma sostanzjalment korretti.

Ma hemmx dubju illi, tenut kont tal-fatt illi r-rikorrent huwa persuna pubblika, il-kumment kien wiehed gustifikabbli li jikkwalifika bhala kritika u mhux zebliħ, tgħajjir jew insolenza.

Fl-ahhar nett, ma hemmx dubju li l-pubblikazzjoni ma saritx bil-ħażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun, kif fehem ir-rikorrent, u kien intiz sabiex iheggeg lir-rikorrenti jiccara il-posizzjoni tieghu. Di fatti, kif stqarr l-istess intimat fix-xhieda tieghu, illi huwa bl-ebda mod ma ried ifisser li "*bhala stat ta' fatt hu (ir-rikorrenti) u/jew il-kumpannija tieghu kienu involuti f'xi 'trading in influence'*".

Kif qalet dina l-Qorti fil-kawza '**Dr Lawrence Gonzi vs Josef Caruana**' deciza fit-18 ta' Jannar 2016, ghalkemm kumment:

..... tista b'xi mod tinstema harxa fil-konfront ta' persuna, peress illi l-fatti kif fuq esposti jirrizultaw sostanzjalment veri u, aktar u aktar, in vista tal-fatt illi r-rikorrent huwa persuna politika illi hija soggetta ghall-livell ta' kritika gholja kif ukoll anke ghal provokazzjoni u esagerazzjonijiet, tali kumment ghandu jitqies bhala wiehed accettabbli fis-socjeta demokratika Maltija u certament ma hijiex malafamanti u libelluza fil-konfront tar-rikorrenti peress illi kien kumment illi kien jirrifletti l-ħsiebijiet ta' l-intimat ibbazati fuq fatti illi huwa kien ikkonstata u li dwarhom hass illi kellu jikkummenta f'dak is-sens.

Ghalhekk, il-Qorti tqis illi l-artikolu meritu tal-kawza tieghu, fl-interjeta tieghu, ma jistax jitqies bhala libelluz u malafamanti fil-konfront tar-rikorrent.

Konkluzjoni

Il-Qorti ghalhekk,

Wara illi rat il-provi prodotti quddiemha,

Wara illi semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimat,

Tichad it-talbiet attrici.

Spejjez tal-proceduri kollha ikunu a kariku tar-rikorrent.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur