



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis sitta u ghoxrin (26) ta' Mejju 2016

Rikors Numru 119/14 FDP

**Dr Simon Busuttil
(ID 242669M)**

vs

Alessandro Mangion (ID 417172M) bhala editur tal-gurnal l-Orizzont

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-4 ta' April 2014 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu ippubblikat fil-gazzetta l-Orizzont fil-harga tat-3 ta' April 2014 intitolat 'Dhul mhux dikjarat' talab lill-Qorti tiddikjara l-istess bhala libelluz u malafamanti fil-konfront tieghu u ghalhekk tikkundanna lill-intimat, bhala editur, ihallas danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat illi r-rikorrent sahaq illi l-artikolu, li jibda fl-ewwel pagna u jkompli fit-tmien pagna bit-titolat "*dwar dak li ghandu x'jaqsam ma' dhul Busuttil ma kien iddikjara xejn*" akkumpanjat b'ritratt tar-rikorrent li okkupa nofs pagna, jikkontjeni allegazzjonijiet u insinwazzjonijiet foloz fosthom, meta jigi allega illi l-attur " ... *ma kienx iddikjara s-sehem tieghu mid-dhul globali ta' aktar minn 1.2 miljun li jirrizulta s'issa li dahhlet minn kuntratti Europa Research & Consultancy servies Limited (ERCS Ltd) fi zmien Gvern Nazzjonalista ... Dan ifisser li l-Kap tal-Opposizzjoni naqas mill-obbligi tieghu, ghaliex id-dikjarazzjoni tal-assi hija xi haga mandatorja ... Dan ifisser li dan ma kienx ezercizzju ta' "kompetizzjoni" jew ta' "kompetenza" li bih intaghzlet il-kumpannija ta' Busuttil.*"

Rat l-artikolu meritu tal-kawza odjerna, illi taht titolu fuq il-pagna ta' quddiem tal-gazzetta l-Orizzont mifrux fuq zewgt linji b'tipa kbira kien hemm il-kliem "Dhul Mhux Iddikjarat", imbghad, hdejn ritatt tar-rikorrent hemm l-artikolu illi jghid is-segwenti:

Meta l-Kap tal-Opposizzjoni Simon Busuttil kien ghadu Membri Parlamentari Ewropew, ma kienx iddikjara s-sehem tieghu mid-dhul globali ta' aktar minn €1.2 miljun, li jirrizulta s'issa li dahhlet minn kuntratti l-kumpannija Europa Research and

Consultancy Services Limited (ERCS Ltd) fi zmien Gvern Nazzjonalista. Ta' min isemmi li nofs dawn il-kuntratti kienu inghataw b'"direct order". (sottolinjar li sar mir-rikorrent)

Dan il-gurnal ghandu f'idejh il-kopja tad-dikjarazzjoni tal-interessi finanzjarji tal-Membri Parlamentari Ewropej, li Simon Busuttil kien ipprezenta nhar it-28 ta' Marzu 2012 u li sussegwentement giet approvata mill-Parlament Ewropew jumejn wara. Kopja ta' din id-dikjarazzjoni tinstab fis-sit ufficjali tal-Parlament Ewropew.

Intant, f'dikjarazzjoni tal-assi, li tigi pprezentata fil-Parlament Ewropew, kull Membru Parlamentari irid jghid x'inhi l-kategorija tad-dhul fix-xahar ghal kull professjoni jew shubija li jkun imdahhal fiha.

Il-kategoriji tad-dhul huma maqsumin f'erba sezzjonijiet ta' dhul ta' bejn €500 sa €1000 kull xahar, ta' bejn €1001 sa €5000 kull xahar, ta' bejn €5001 sa €10000 kull xahar, ta' aktar minn €10000 kull xahar.

Fid-dikjarazzjoni tal-assi tieghu, Simon Busuttil qal li kien dahhal bejn €1,001 u €5,000 bhala Direttur tal-MIC bejn l-1991 u l-2003. Dan minkejja li kien iddikjara li ma kienx dahhal aktar mill-paga minima minn din il-kariga. Kien iddikjara wkoll li dahhal l-istess ammont bhala siehed fid-Ditta Legali Ganado Sammut Advocates sal-2010.

Izda, f'dak li ghandu x'jaqsam ma' dhul mill-kumpannija ERCS Limited, Simon Busuttil ma kien iddikjara xejn. Dan ifisser li l-Kap tal-Oppozizzjoni naqas mill-obbligi tieghu, ghaliex id-dikjarazzjoni tal-assi hija haga mandatorja. (sottolinjar li sar mir-rikorrent)

Dan in-nuqqas min-naha ta' Simon Busuttil, jikkontrasta sewwa mal-plejtu shih li ghamel il-Partit Nazzjonalista f'tit tax-xhur ilu, meta kien allega li kien hemm nuqqas min-naha tal-Ministri ta' Gvern Laburista fil-mod kif iddikjaraw l-assi taghhom fil-Parlament Malti.

Lejn l-ahhar ta' dan ix-xahar li ghadda, dan il-gurnal kien irrapporta li l-kumpannija ERCS Limited kienet hadet ghadd sostanzjali ta' direct orders taht Gvern Nazzjonalista, li sa issa d-dhul totali taghhom jammonta ghal €1.2 miljun.

Dawn id-direct orders, igifieri kuntratti minghajr sejha ghall-offerti, kienu inghataw fost ohrajn mill-Ministeru immexxi minn George Pullicino u mid-Dipartiment tas-Sajd. L-ammont li ssemwew kienu ta' €421,000 u €50,000 rispettivament.

Apparti minn hekk, irrizulta li hemm ukoll €49,500 f'ghoti dirett ta' kuntratti, li nghataw kollha b'direct orders mill-Ministeru ghat-trasport u Infrastruttura bejn Settembru tal-1998 u Marsu tat-2013, igifieri l-ahhar tliet legizlaturi ta' Gvern Nazzjonalista.

Din il-kwistjoni kollha tad-direct orders qamet waqt il-program Xarabank, hekk kif meta kien ffaccjat minn dak li zvela l-Prim Ministru Joseph Muscat, il-Kap tal-Oppozizzjoni, vizibbilment skomdu, qal li l-kumpannija tieghu rebhet tenders b'kompetizzjoni u kompetenza.

Minkejja dan, il-fatti s'issa qed igiddu lil Busuttil hekk kif, f'tempt ta' ghaxart ijiem, kien zvelat, kemm mill-Prim Ministru u kif ukoll mit-TORCA, li xejn anqas minn €520,000 f'rebh ta' kuntratti sar minghajr sejha ghall-offerta, jew ahjar, direct order.

Dan ifisser li dan ma kienx ezercizzju ta' "kompetizzjoni" jew ta' "kompetenza" li bih intghazlet il-kumpannija ta' Busuttil, għall-kuntrarju tal-impressjoni li ipprova jagħti fil-programm Xarabank. (sottolinjar li sar mir-rikorrent)

Intant, mit-twegibiet li nġataw mill-Mistoqsijiet Parlamentari komplew johorgu aktar fatti dwar id-direct orders li nġatat il-kumpannija Ganado Sammut Advocates li l-Kap tal-Opposizzjoni huwa sieheb fiha sal-2010, skond id-dikjarazzjoni tal-assi li pprezenta fil-Parlament Ewropew fl-2012.

Fost ohrajn, il-Ministru Karmenu Vella qal li l-Air Malta tat-xoghlijiet lill-kumpannija Ganado Sammut Advocates. Irrizulta li bejn l-2005 u l-2010, din il-kumpannija nġatat xoghlijiet ta' konsulenza permezz ta' direct order u thallset is-somma ta' €7,229.

Min-naha l-ohra, il-Ministru Leo Brincat qal li mill-Ministeru għall-Izvilupp Sostenibbli, il-kumpannija Ganado Sammut Advocates inġata is-somma ta' €15,718 f'direct orders.

Fi twegiba għall-Mistoqsija Parlamentari ohra, il-Ministru Chris Cardona qal din l-istess kumpannija fl-2004 inġatat is-somma ta' €549 f'direct order mill-Malta Enterprise. Apparti minn hekk, bejn l-2007 u l-2012, dina il-kumpannija nġatat is-somma ta' €1,110 f'direct orders mill-Awtorita tal-Logħob u l-Lotteriji.

Rat l-eccezzjonijiet ipprezentati mill-intimat fit 22 ta' Mejju 2014 fejn laqa' għal dak mitlub billi sahaq illi dak li kiteb ma kellu xejn oggezzjonabbli izda kien biss tagħrif ta' interess pubbliku u kummenti dwar l-istess u insista illi huwa dmir tiegħu illi jgħarraf lill-qarrejja u jhalli lill-qarrejja jaslu għall-konkluzjonijiet tagħhom, aktar u aktar, meta jirrigwarda il-Kap tal-Opposizzjoni li għandu jkun mftuh għal kritika, anke iebša.

Rat l-affidavit ta' **Dr Simon Busuttil** ipprezentat fl-10 ta' Ottubru 2014 u d-dokumentazzjoni minnu annessa.

Rat illi fit-13 ta' Ottubru 2014 ir-rikorrenti iddikjara illi ma kellhux aktar provi x'jipprezenta.

Rat l-affidavit ta' **Alessandro Mangion** ipprezentat fl-14 ta' Mejju 2015 u d-dokumentazzjoni minnu annessa.

Semgħet il-kontro ezami ta' Alessandro Mangion illi sart fil 25 ta' Gunju 2015.

Rat illi fis 26 ta' Novembru 2015 il-Qorti ddikjarat l-istadju tal-gbir tal-provi bhala magħluqa.

Semgħet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fl-14 ta' April 2016, wara liema data il-kawza giet differita għas-sentenza għallum.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent Dr Simon Busuttil, illi huwa l-Kap tal-Opposizzjoni, hassu ingurjat bil-kontenut ta' artikolu illi inkiteb fil-gurnal l-Orizzont fit 3 ta' April 2014, ta' liema gazzetta l-intimat kien l-editur fiz-zmien tal-pubblikazzjoni u għalhekk huwa responsabbli ta' dak illi jkun hemm miktub.

Jirrizulta illi l-kontestazzjoni principali tar-rikorrent hija dak illi huwa rifless fit-titolu ta' l-artikolu, ossija "**Dhul Mhux Dikjarat**", liema titolu kien jidher b'karattri kbar hafna fuq il-faccata tal-gazzetta innifisha, liema titolu, wahdu, ha kwazi kwart tal-pagna ta' quddiem tal-gazzetta l-Orizzont.

Jirrizulta illi, apparti t-titolu ta' l-artikolu fuq imsemmi, ir-rikorrent hassu malafamat ukoll b'certa kontenut illi kien hemm fiha, u, di fatti, huwa indika s-segwenti kontenut bhala dak illi huwa hass li kellu jirriveva bhala mafamanti fil-konfront tieghu. Dana il-kontenut kien is-segwenti:

" ... ma kienx iddikjarax s-sehem tieghu mid-dhul globali ta' aktar minn 1.2 miljun li jirrizulta s'issa li dahhlet minn kuntratti Europa Research & Consultancy servies Limited (ERCS Ltd) fi zmien Gvern Nazzjonalista ... "

"Dan ifisser li l-Kap tal-Opposizzjoni naqas mill-obbligi tieghu, ghaliex id-dikjarazzjoni tal-assi hija xi haga mandatorja ... "

"Dan ifisser li dan ma kienx ezercizzju ta' "kompetizzjoni" jew ta' "kompetenza" li bih intaghzlet il-kumpanija ta' Busuttil."

Jidher, ghalhekk, illi l-ilmenti principali tar-rikorrent kienu dwar zewgt kwistjonijiet distinti, ossija dwar il-fatt illi gie allegat illi huwa naqas milli jaghmel xi dikjarazzjonijiet minnu mehtiega, u dwar il-fatt illi l-kumpanija ERCS Limited ma gietx maghzula rizultat ta' kompetizzjoni jew kompetenza.

Jirrizulta, mill-banda l-ohra, illi l-intimat sahaq illi dak minnu miktub huwa rizultat tad-dmir illi gurnalist ghandu illi jghaddi informazzjoni lill-pubbliku in generali u jaghmel il-kummenti tieghu dwar tali informazzjoni sabiex imbgħad il-pubbliku in generali ikun jista jghaddi għall-konkluzjonijiet tieghu.

Ikkunsidrat

Ikun opportun, f'dana l-istadju, illi jigu kkunsidrati xi principji stabbiliti dwar kemm id-dritt tal-gurnalist illi jirrapurta kif ukoll id-dritt ta' persuna politika illi jkollha r-reputazzjoni tagħha protetta.

Fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret referenza għall-principji generali li jirregolaw tali drittijiet, kif ukoll introduciet 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, u intqal 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 (sottolinjar ta' dina l-Qorti)”.

.....

Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinar 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.

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-esspressjoni, 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.*

Dwar l-informazzjoni illi jippublikaw il-gurnalisti, fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, 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 (Sottolinjar ta' dina l-Qorti) 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.

Ghalkemm imkien fid-difiza ma jidher illi saret referenza espressa ghall "fair comment" u "value judgment", jidher car illi l-linja difensjonali ta' l-intimat hija intiza sabiex tuza d-difiza ta' 'fair comment' u 'value judgment' bhala l-linja difensjonali tieghu.

Fil-kawza fuq imsemmija, **Erla Hlynsdottir**, il-Qorti ghamlet is-segwenti osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajjma 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', imbgħad, **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 żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment gust tkun tghodd, jeħtieg li min jistrieħ fuqha jseħħlu 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 gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tghajir 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-segwenti 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

Minn ezami akkurat ta' l-artikolu, jidher illi l-artikolist kien qieghed jimputa lir-rikorrent l-akkuza illi huwa ma kienx iddikjara dhul illi huwa kien ghamel mill-kumpannija ERCS Limited, liema kumpannija, skond l-artikolist, kienet dahhlet aktar minn €1.2 miljun Ewro f'kuntratti mal-Gvern illi kien immexxi mill-Gvern Nazzjonalista.

Jidher, madanakollu, illi l-artikolist naqas milli jaghmel il-verifiki tieghu korrettement qabel ma wasal ghal tali konkluzjonijiet, u dana kemm ghal dak illi jirrigwarda s-sehem illi r-rikorrent kellu f'tali kumpannija u kif ukoll jekk ir-rikorrent attwalment ibbenefikax minn xi profitti.

Jirrizulta, mill-provi prodotti mir-rikorrent, illi s-socjeta ERCS Limited ghandha zewgt azzjonisti, ossija EMCS Investments Limited u Gansam Holdings Limited.

Jirrizulta, mill-istess provi, illi r-rikorrent ghandu terz tal-ishma tas-socjeta Gansam Holdings Limited, iz-zewgt azzjonist l-ohra jkunu Dr Austin Sammut u Dr Peter Fenech, dak iz-zmien shab flimkien f'Ditta ta' Avukati.

Jirrizulta illi s-socjeta Gansam Holdings Limited, fis-sena 2011, ma ddikjarat ebda dividends sabiex jitqassmu mat-tlett azzjonisti taghha u zammet il-qliegħ li ghamlet is-socjeta fil-kotba taghha.

Jirrizulta, ghalhekk, illi r-rikorrent ma kien irregistra ebda qliegħ mis-socjeta Gansam Holdings Limited u wisq anqas mis-socjeta ERCS Limited, bir-rizultat illi, ghalhekk, a differenza ta' dak allegat mill-intimat tul l-artikolu kollu, ma kienx minnu illi r-rikorrent kien "*naqas mill-obbligi tieghu*", kif jiddikjara u jakkuza apertament lir-rikorrent, stante illi ma kellu assolutament ebda dhul x'jiddikjara ghas-sena 2011 mill-kumpannija Gansam Holdings Limited.

Jirrizulta wkoll illi, ghalkemm l-intimat insista illi r-rikorrent kien naqas milli jiddikjara id-dhul tieghu mill-ERCS Limited, huwa qatt ma seta jiddikjara dhul minn dina l-kumpannija peress illi huwa, personalment, ma ghandu assolutament ebda sehem minn tali kumpannija.

Jirrizulta illi tali informazzjoni kienet kollha facilment accessibbli għall-artikolist kieku ghamel l-investigazzjonijiet kollha rikjesti minn gurnalist u ghalhekk, jidher car illi ma huwiex minnu dak illi stqarr l-intimat illi l-artikolist kien qieghed jghaddi l-informazzjoni kollha lill-pubbliku sabiex imbghad jiggudika hu, u dana peress illi jidher car illi l-artikolist ghazel illi ma jghaddix l-informazzjoni kollha lill-pubbliku in generali izda ghadda biss din l-informazzjoni illi, wahdeha, tista taghmel hsara lir-rikorrent u ma ghaddhiex lill-pubbliku in generali l-informazzjoni kollha illi huwa messu gabar qabel ma ppubblika l-artikolu meritu tal-kawza odjerna.

Ghalhekk, il-Qorti ma ghandha ebda dubju illi tikkonkludi illi l-artikolu meritu tal-kawza odjerna, fejn allegat illi r-rikorrent kien naqas milli jiddikjara dhul li kienet ghamlet is-socjeta ERCS Limited kien libelluz u malafamanti fil-konfront tar-rikorrent.

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

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

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tiddikjara l-artikolu ippubblikat fil-gazzetta l-Orizzont fil-harga tat-3 ta' April 2014 intitolat '**Dhul mhux dikjarat**' bhala libelluz u malafamanti fil-konfront tar-rikorrenti u għalhekk

Tikkundanna lill-intimat, bhala editur tal-gazzetta l-Orizzont fit 3 ta' April 2014, ihallas lir-rikorrent is-somma ta' tlett elef Euro (€3,000) in linea ta' danni a tenur ta' l-Artikolu 28 tal-Kap 248.

Spejjez tal-proceduri odjerni u imghax mid-data tas-sentenza sad-data tal-pagament effettiv kollu a kariku ta' l-intimat.

Magistrat Francesco Depasquale

Marisa Bugeja

Deputat Registratur