



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Hamis tnejn (2) ta' Gunju 2016

Rikors Numru 149/10 FDP

**Jesmond Bonello u Content House Limited
(ID 360674M) u (C 34903)**

vs

**Saviour Balzan (ID 127263M)
u
Raphael Vassallo (ID 265471M)**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit 30 ta' April 2010 fejn ir-rikorrenti, filwaqt illi ghamlu referenza ghall-artikolu miktub minn Saviour Balzan illi deher fil-gazzetta Maltatoday tal-Erbgha 21 ta' April 2010, ta' liema gazzetta Raphael Vassallo kien l-editur registrat, liema artikolu kien intitolat '*Did you say no corruption Dear Tonio?*', talbu lill dina l-Qorti tiddikjara il-kontenut ta' tali artikolu, fejn jissemew ir-rikorrenti Jesmond Bonello u Content House Limited direttament, kien libelluz u malafamanti fil-konfront taghhom, u ghalhekk tikkundanna lill-istess intimati ihallsuhom danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna, intitolat '*Did you say no corruption, dear Tonio?*', u partikolarment il-parti indikata mir-rikorrenti bhala malafamanti fil-konfront taghhom, fejn Saviour Balzan, waqt illi kien qed jitkellem dwar l-azzjonjiet illi ha Tonio Fenech kontra l-Malta Today bhala rizultat ta' stejjer illi l-istess gazzetta kitbet dwaru, jghid is-segwent:

"To ensure that the boycott is tendered 100% successful, the Finance Ministry has enlisted Jesmond Bonello, the director of Content House and a member of Malta Enterprise, the marking house renowned for its direct orders from the government and for packaging campaigns to suit the tailor-made propaganda directives from Castille"

Rat ir-risposta ta' l-intimati ippresentat fl-4 ta' Ottubru 2010 fejn saħqu illi dak hemm miktub ma kienx libelluz fil-konfront tar-rikorrenti filwaqt illi insistew illi Saviour Balzan kien qieghed jesercita d-dritt gurnalistiku tieghu li jikkummenta dwar fatti ta' interess pubbliku, liema kummenti kienu accettabbli f'socjeta demokratika, u ghalhekk dak illi qal jammont ghal 'fair comment'.

Rat ix-xhieda ta' **Jesmond Bonello** moghtija fit 18 ta' Jannar 2011.

Rat illi fit 18 ta' Jannar 2011 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet ix-xhieda ta' **Joseph Croker**, rapprezentant tal-Ministeru tal-Finanzi, moghtija fis-7 ta' Ottubru 2011 u fit 8 ta' Frar 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Alexander Mamo**, Direttur Generali tas-Support Services fi hdan l-Ufficcju tal-Prim Ministru, moghtija fit 12 ta' Lulju 2012.

Semghet ix-xhieda ta' **Audreyanne Callus Randich**, rapprezentanta tal-Ministeru tal-Finanzi, moghtija fit 12 ta' Lulju 2012.

Semghet ix-xhieda in kontro ezami ta' **Jesmond Bonello** moghtija fit 12 ta' Lulju 2012.

Semghet ix-xhieda ta' **Daniel Grima**, EU Funds Officer fi hdan il-Ministeru tar-Rizorsi u Affarjiet Rurali moghtija fit 12 ta' Novembru 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **John Sant**, rapprezentant tal-Ministeru tal-Gustizzja u l-Izvilupp tal-Familja moghtija fit 12 ta' Novembru 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Alex Magro**, rapprezentant tal-Ufficcju tal-Prim Ministru moghtija fit 12 ta' Novembru 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Jean Pierre Aquilina**, rapprezentant tal-Malta Communications Authority moghtija fit 12 ta' Novembru 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **John Sant**, rapprezentant tal-Ministeru tal-Gustizzja u l-Izvilupp tal-Familja moghtija fit 22 ta' Marzu 2013 u rat id-dokumentazzjoni minnu esebita.

Semghet il-kontro ezami ta' Jesmond Bonello illi saret fit 23 ta' Settembru 2013.

Semghet ix-xhieda ta' **Raymond Grillo**, rapprezentant tal-Kamra tar-Rapprezentanti, moghtija fit 13 ta' Jannar 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Saviour Balzan** moghtija fit 13 ta' Gunju 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Joseph Zammit**, rapprezentant tal-Malta Enterprise u Malta Industrial Parks, moghtija fit 3 ta' Ottubru 2014.

Semghet ix-xhieda ta' **Dr Godwin Aquilina**, rapprezentant tal-Air Malta, moghtija fit 3 ta' Ottubru 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Mary Rose Pace**, rapprezentant tal-Air Malta, moghtija fit 3 ta' Ottubru 2014 u rat id-dokumentazzjoni minnha esebita.

Semghet ix-xhieda ta' **Joseph Zammit**, rapprezentant tal-Malta Enterprise u Malta Industrial Parks, moghtija fl-20 ta' Novembru 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Mary Rose Pace**, rapprezentant tal-Air Malta, moghtija fid-29 ta' Jannar 2015 u rat id-dokumentazzjoni minnha esebita.

Rat illi fil 11 ta' Mejju 2015 l-intimat iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda in ri-ezami ta' Jesmond Bonello, moghtija fid-19 ta' Ottubru 2015.

Rat illi fid 19 ta' Ottubru 2015 il-Qorti ddikjarat il-provi kollha bhala maghluqa.

Rat in-nota ta' sottomissjonijiet tar-rikorrenti ippresentata fl-14 ta' Dicembru 2015.

Rat in-nota ta' sottomissjonijiet ta' l-intimat ippresentata fis 26 ta' April 2016.

Rat illi fit 2 ta' Mejju 2016 il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent Jesmond Bonello huwa propratarju tas-socjeta Content House Limited, liema socjeta tipprovdi servizzi ta' Public Relations, Advertising u Marketing lill min inqabbadha taghmel is-servizzi.

Jirrizulta, mill-provi prodotti, illi fil-periodu 2008 sa 2012, is-socjeta Content House Limited inghatat varji inkarigi minn Dipartimenti tal-Gvern kif ukoll entitajiet parastatali, kemm permezz ta' Direct Orders, kif ukoll permezz ta' Tenders mahrugin ghas-servizzi specifici, liema xogholijiet kien inghatawliha, fost affarjiet ohra, mis-segwenti:

- mis-Segretarjat tal-Prim Ministru fi hdan l-Ufficju tal-Prim Ministru,
- mill-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar,
- mill-Kunsill Malti ghall-Kultura u l-Arti,
- mic-Centru tal-Mediterran ghall-Konferenzi,
- mid-Dipartiment ta' l-Infurmazzjoni,
- mill-Korporazzjoni tax-Xoghol u Tahrig,
- mill-Kummissjoni ghall-Edukazzjoni Oghla fi hdan il-Ministeru tal-Edukazzjoni, Xoghol u l-Familja,
- mill-Ministeru ghar-Rizorsi u Affarjiet Rurali,
- mill-Ministeru tal-Gustizzja, Djalogu u l-Familja,
- mill-Ministeru tal-Affarjiet Barranin,
- mill-MITA,
- minn-National Euro Changeover Committee,
- mill-Korporazzjoni Enemalta,
- mill-Orkestra Nazzjonali,
- minn Heritage Malta,
- mill-Malta Tourism Authority,
- mill-Airmalta plc
- mis-Segretarjat privat tal-Ministeru tal-Finanzi
- mill-Malta Enterprise,
- mill-Lotteries and Gaming Authority,
- mill-Ministeru ghal Ghawdex,
- mill-Kunsill Malti ghall-Isport,

- mill-Water Services Corporation,
- mill-Malta Resources Authority,

Jirrizulta illi fl-artikolu meritu tal-kawza odjerna, illi dwaru qieghed jilmentaw ir-rikorrenti, l-intimat Saviour Balzan, illi kien l-awtur tal-artikolu, kien qieghed jilmenta dwar agir illi kien qieghed jiehu fil-konfront tieghu, Tonio Fenech, dak iz-zmien Ministru tal-Finanzi.

Jirrizulta, infatti, illi l-artikolu, intitolat 'Did you say no corruption, dear Tonio?', jghid is-segwenti:

"He (Tonio Fenech) has hit back at MaltaToday in two ways. First he libelled us over the private place story after his colleague and backbencher Franco Debono revealed the matter in a parliamentary meeting; then he blessed an advertising boycott orchestrated by Edgar Galea Curmi and Keith Zahra against MediaToday publications."

Balzan imbghad ikompli jghid is-segwenti kliem illi r-rikorrenti qiesu bhala malafamanti:

"To ensure that the boycott is tendered 100% successful, the Finance Ministry has enlisted Jesmond Bonello, the director of Content House and a member of Malta Enterprise, the marketing house renowned for its direct orders from the government and for packaging campaigns to suit the tailor-made propaganda directives from Castille"

Jirrizulta, fix-xhieda tar-rikorrent illi ta' fit 18 ta' Jannar 2011, illi r-rikorrent hassu malafamat bil-kontenut ta' l-artikolu peress illi Balzan jallega illi Bonello kien qieghed jassikura illi jsir boycott da' parte tal-Ministeru tal-Finanzi fil-konfront ta' Balzan u s-servizzi minnu offruti, kif ukoll illi Balzan kien qieghed jallega illi r-rikorrenti kienu qed jinghataw hafna 'Direct Orders' mill-Gvern u entitajiet governattivi.

Ikkunsidrat

Jirrizulta illi l-intimati, fid-difiza taghhom, ressqu bhala linja difensjonali dik tal-'fair comment' u li dak hemm mitkub ma setax jitqies bhala libelluz u malafamanti fil-konfront tar-rikorrent.

Ikun ghalhekk opportun illi dina l-Qorti tikkunsidra, fil-qasir, certa elementi kardinali li jirrigwarda id-difiza tal-fair comment.

Dwar id-dritt tal-espressjoni, illi ghamlu referenza ghaliha l-intimati, fil-kawza deciza mill-Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijet **Axel Springer AG vs Germany** deciza fis-7 ta' Frar 2012, 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 (see, among other authorities, Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24; Editions Plon v. France, no. 58148/00, § 42, ECHR 2004-IV; and Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

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” (see *Bladet Tromsø and Stensaas v. Norway [GC]*, no. 21980/93, §§ 59 and 62, *ECHR 1999-III*, and *Pedersen and Baadsgaard*, cited above, § 71*

Kif komplet tghid l-istess Qorti

81. *Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Pedersen and Baadsgaard*, cited above, § 71). 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 (see *Jersild v. Denmark*, 23 September 1994, § 31, *Series A no. 298*, and *Eerikäinen and Others v. Finland*, no. 3514/02, § 65, 10 February 2009).*

Jirrizulta illi r-rikorrenti kellhom varju 'direct orders' u kuntratti moghtija lilhom minn Dipartiment varji tal-gvern kif ukoll entitajiet govcernattivi, u, kif qalet il-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kaz **Voronezhe**,

The Court points out that private individuals lay themselves open to scrutiny when they enter the public arena and considers that the issue of the proper use of public funds is undoubtedly a matter for open public discussion.

Dwar id-difiza ta' 'fair comment', f' **Gatley on Libel and Slander** jinghad illi :

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.

Kif jghid Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

Din il-Qorti tosserva wkoll illi r-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandha tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, u ghalhekk, kif tghid il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kawza Axel Springer fuq imsemmija:

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.

Tenut kont ta' dawna l-fatti, il-Qorti ghandha tassikura illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem niedet sitt kriterji importanti sabiex jigi assikurat illi, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Tali kriterji huma mhaddna anke mill-Qrati taghna, kif qalet il-Prim Awla tal-Qorti Civili fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, fejn osservat korrettement illi :

dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jsehħlu 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 bhala kritika u mhux zebliħ, tghajjir 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 preciz li jwegga' lil dak li jkun.

Ikkunsidrat

Jirrizulta mill-provi prodotti, illi r-rikorrenti kienu originalment qed jilmentaw minn zewgt allegazzjonijiet magħmulha fl-artikolu, ossija illi huma kienu qed jassikraw illi l-Ministeru tal-Finanzi jibbojkottja s-servizzi ta' Balzan, u illi r-rikorrent kienu qed jinghataw hafna 'direct orders'.

Jirrizulta illi, waqt il-mori tal-kawza, ir-rikorrent iddikjara illi huwa ma kienx qed ihossu libellat ill-fatt illi huma kienu qed jinghataw direct orders (fol 57)

Jirrizulta, di fatti, minn dokumentazzjoni ippresentata waqt il-mori tal-kawza, illi r-rikorrenti kienet inghatat hafna direct orders minn varji Ministeri tal-Gvern kif ukoll entitajiet varji, kif fuq imsemmija, liema provi juru bic-car illi r-rikorrenti kienu jipprovdi hafna servizzi varji mogħtija lilhom, minn zmien għal zmien, fuq direct order.

Jirrizulta illi r-rikorrenti jikkontendu wkoll illi ma kienx minnu illi huma kienu involtu f'xi boycott illi kien qieghed isir fil-konfront ta' Balzan u s-servizzi minnu resi.

Il-Qorti tosserva illi l-kliem adoperat minn Balzan ma kienx daqstant car u, di fatti, kif jistqarr ir-rikorrenti stess, a fol 14, "onestament mill-artikolu ma fhimtx ezatt x'kien qed jigi allegat minn Balzan illi għamilna".

Illi, di fatti, jirrizulta ben car illi l-intimat Balzan kien qieghed jagħmel referenza għal Tonio Fenech u l-azzjonijiet illi ha Tonio Fenech fil-konfront tieghu meta Balzan kien ippubblika storja dwar Tonio Fenech.

Jirrizulta, ghalhekk, illi l-allegazzjoni ta' boycott ma kienetx qed issir direttament fil-konfront tar-rikorrenti, kif huma jikkontendu, imma kienet qed issir fil-konfront ta' Tonio Fenech, u dana johrog car meta wiehed jaqra l-assjem ta' l-artikolu u, partikolarment, il-paragrafu ta' qabel dak li dwaru r-rikorrenti hassuhom malafamati, kif fuq rappurtat.

Il-Qorti tosserva illi kliem u frazijiet illi wiehed jista jhoss illi huma malafamanti ghandhom jigu kkunsidrati u ezaminati fil-kuntest ta' l-artikolu kollu u ma ghandhomx jinqalghu barra mill-kuntest taghhom. Dana qieghed jinghad ghax, fil-kaz odjern, jidher car, anke kif juri it-titolu ta' l-artikolu inniffsu, illi l-attakk kien fil-konfront ta' Tonio Fenech u mhux fil-konfront tar-rikorrenti, liema rikorrenti, huwa minnu, kienu gew kkuntrattati mid-Dipartiment tal-Finanzi, fost il-hafna Ministeru u entitajiet governattivi, sabiex jipprovdu varji servizzi varji.

Ghalhekk, filwaqt illi fejn jidhol l-allegazzjoni tad-direct orders, dana gie sostanzjalment ippruvat mill-intimati, ghal dak illi jirrigwarda l-allegazzjoni tal-boycott, jidher car li tali allegazzjoni kienet fil-konfront ta' terzi u mhux tar-rikorrenti.

Ghalhekk, il-kontenut ta' dak hemm mitkub ma jistax jitqies bhala malafamanti u libelluz fil-konfront tar-rikorrenti.

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ippresentati mill-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha taz-zewgt intimati,

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni ghandhom ikunu kollha a kariku tar-rikorrenti in solidum bejniethom.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur