



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis sitta (6) ta' Ottubru 2016

**Rikors Numru 172/12 FDP**

**Jason Micallef  
(ID 148771M)**

vs

**Louiselle Vassallo (ID 22572M), Nathaniel Attard u Victor Camilleri**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-10 ta' Mejju 2012 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu illi deher fil-gazzetta Il-Mument tas-6 ta' Mejju 2012, liema artikolu u storja gie wkoll irrappurtat fl-ahbarjiet tas-19.30 fuq NET TV, talab lill-Qorti tiddikjara tali artikoli bhala malafamanti fil-konfront tar-rikorrent u ghalhekk tikkundanna lill-intimat ihallsuh danni in linea mal-Artikolu 3 u 28 tal-Kap 248.

Rat l-artikoli intitolati "*Jason rebah lil Muscat dwar Bundy wkoll*" u "*Il-Labour jesagera*" illi deheru fil-harga tal-Mument tas 6 ta' Mejju 2012 kif ukoll rat l-ahbarjiet trasmessi dakinhar stess fis 19.30pm fuq NET TV, lkoll esebiti mir-rikorrent.

Rat l-eccezzjonijiet ta' l-intimat fejn, preliminarjament, Nathaniel Attard u Louiselle Vassallo eccepew illi ma humiex azzjonabbli taht il-Ligi tal-Istampa u ghalhekk kellhom jigu liberati mill-osservanza tal-gudizzju filwaqt illi fuq il-meritu lkoll stqarrew illi ma kien hemm xejn libelluz f'dak

illi nkiteb, li kienet opinjoni analitika u politika ta' partit u ghandu jitqies bhala value judgment u fair comment protetta mill-Kostituzzjoni u Konvenzjoni Ewropea tad-Drittijiet tal-Bniede,.

Rat illi bejn it 12 t' Lulju 2012 u it 2 ta' Dicembru 2013 saru sebgha seduti fejn ir-rikorrent ma ressaq ebda provi.

Semghet ix-xhieda tar-rikorrent **Jason Micallef** moghtija in ezami u kontro ezami fit 2 ta' Dicembru 2013 u fl 14 ta' Frar 2014.

Rat illi fl-14 ta' Frar 2014 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Nathaniel Attard** moghtija fl-24 ta' Marzu 2014.

Semghet ix-xhieda ta' **John Bundy** moghtija fit 30 ta' Mejju 2014.

Semghet ix-xhieda ta' **Louiselle Vassallo** moghtija fis 27 ta' Ottubru 2014.

Rat id-dokumentazzjoni ippresentata mill-intimati, ossija l-Abridged Financial Statements tas-socjeta 26th Frame Limited ghas-sena 2011.

Rat illi fit 18 ta' Jannar 2016 l-intimati iddikjaraw illi ma kellhomx aktar provi x'jippresentaw w il-kawza thalliet ghas-sottomissjonijet finali.

Semghet it-trattazzjoni tal-abbli difensuri tal-partijiet illi saret fid 9 ta' Gunju 2016, wara liema trattazzjoni il-kawza giet differita ghas-sentenza ghallum.

## **Ikkunsidrat**

Jirrizulta, mill-provi prodotti, illi r-rikorrent, Jason Micallef, fis-6 ta' Mejju 2012, kellu l-kariga ta' Chairman tal-kumpannija One Productions, illi hija kumpannija li tmexxi l-mezzi kollha tax-xandir tal-Partit Laburista.

Jirrizulta wkoll illi l-istess rikorrenti, li fil-passat kellu l-kariga ta' Segretarju Generali tal-Malta Labour Party ghal diversi snin, fiz-zmien li nkiteb l-artikolu u xxandar l-ahbar meritu tal-kawza odjerna, kien gia kandidat ghall-Partit Laburista ghall-Elezzjoni Generali, u kien hemm dibattitu ghaddej dwar jekk kienx ser jikkandida ruhu ghall-Elezzjoni Generali illi kienet ser tinzamm f' Marzu 2013.

Jirrizulta illi r-rikorrent hassu malafamat bl-artikolu illi deher fil-harga tal-Mument kif ukoll fuq dak imxandar fuq l-ahbarjiet tal-NET TV, lkoll fis-6 ta' Mejju 2012, u dana partikolarment fuq zewgt allegazzjonijiet illi saru fil-konfront tieghu, fejn inghad illi huwa baghat numru kbir ta' gurnalisti sabiex jirrapportaw attivita' tal-Partit Nazzjonalista sabiex johloq incitament kif ukoll inghad illi huwa kien waqqaf il-programm televiziv Breakfast Show imtella minn John Bundy.

Jirrizulta illi, fi-kaz odjern, l-unika prova illi ressaq ir-rikorrent kien tieghu stess, filwaqt illi l-intimati pproducew bhala xhud lill John Bundy apparti x-xhieda ta' l-intimata Louiselle Vassallo.

Jirrizulta illi, fix-xhieda tieghu, Micallef cahad illi kien baghat erbgħa gurnalisti sabiex jirrapportaw attivita' tal-Partit Nazzjonalista sabiex jincita u jistieden il-problemi.

Jirrizulta wkoll, fl-istess xhieda, illi Micallef insista illi l-programm illi kien imexxi Joh Bundy bl- isem ta' Breakfast Show kien produzzjoni tal-kumpannija 26th Frame Limited, u kienet decizjoni tal-kumpannija stess li twaqqaf il-programm ghal ragunijiet kummercjali taghha, u ghalhekk insista li d-decizjoni biex jitwaqqaf jaghmel il-programm John Bundy ma kienet decizjoni tieghu izda kienet decizjoni tal-kumpannija illi fiha l-istess Bundy kellu sehem.

Jirrizulta illi, skond John Bundy, kien ikollu argumenti shan hafna ma' Jason Micallef regolarment, peress illi Micallef kien jinsisti mieghu illi jdahhal spots politici waqt il-programmi imtella minnu kif ukoll jinkludi kontenut politiku fih filwaqt illi Bundy kien jinsisti illi l-ftehim li kellu kien jispecifica illi ma kellu jkun hemm l-ebda element politiku fih, u ghalhekk kien joggezzjona ghar-rikjesti ta' Micallef.

Jirrizulta illi l-istess Bundy sahaq illi Micallef eventwalment beda jaghmel pressjoni mal-kumpannija 26th Frame sabiex jdahhlu kontenut u spots politici fil-programmi mtella minn Bundy u, skond Bundy, meta l-istess kumpannija giet rinfaccjata bil-posizzjoni ta' Bundy illi ma jdahhu ebda element politiku fil-programm tieghu, huma ddecidew illi jwaqqfu il-programm hekk kif il-program kien waqaf mill-iskeda tieghu.

Jirrizulta, madanakollu, illi ghalkemm Bundy twaqqaf milli jkompli jtella l-programm 'Bongu Bundy', huwa kompla jipproduci u jmexxi l-programm 'Affari Taghna', u dana sa Marzu 2013 meta spiccat l-iskeda.

Jirrizulta illi fid-9 ta' April 2012, ossija ftit wara illi twaqqaf il-programm 'Bongu Malta', il-gazzetta Times of Malta ippubblikat storja intitolata 'Bundy does not know whether to laugh or cry over chairman's comments', fejn, b'referenza ghall kumment illi kien ghamel ir-rikorrent fejn qal "No one was axed. My hands were tied", Bundy qal "I read what Mr Jason Micallef said and really don't know whether I should laugh or cry."

## Ikkunsidrat

Jirrizulta illi, fid-difiza taghhom, l-intimati stqarrew illi l-kummenti taghhom kellhom jitqiesu bhala '*value judgment*' u '*fair comment*' u ghalhekk ikun opportun illi jigu evalwati certi elementi relatati ma' '*fair comment*'

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

*... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehlieg 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.*

Tali taghlim 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 ghamel is-segwent i 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.*

Tali principju gew anke riflessi minn decizjonijiet tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fejn, per eżempju, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, u 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.*

L-istess Qorti taghmel referenza ghall-bilanc illi irid jinholoq bejn id-dritt tal-liberta' ta' l-espressjoni u d-dritt tal-protezzjoni tar-reputazzjoni, u taghmel is-segwenti osservazzjonijiet:

*..... 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.*

Sabiex 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.*

Dina l-Qorti tosserva illi filwaqt illi l-ahhar kriterju huwa kriterju illi tadopera l-Qorti Ewropea sabiex tivverifika jekk decizjoni ta' qradi 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.*

Fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, dwar "value judgment" intqal is-segwenti:

*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.*

## **Ikkunsidrat**

Jirrizulta mhux ikkontestat illi r-rikorrent huwa persuna pubblika kif ukoll politika, kemm ghax kellu kariga ta' Segretarju Generali tal-Malta Labour Party għal numru ta' snin qabel il-pubblikazzjoni tal-artikolu, kif ukoll illi, fil-mument illi nkiteb l-artikolu meritu tal-kawza odjerna, kien ic-Chairman tal-One Productions Limited, illi hija l-kumpannija illi tmexxi l-mezzi tax-xandir kollha.

Jirrizulta wkoll, mill-provi prodotti, illi għalkemm r-rikorrent jindika zewgt allegazzjonijiet bhala dawk illi l-aktar urtawh, ossija dik relatata man-numru ta' gurnalisti f'attivitá tal-Partit Nazzjonalista u dik relatata ma' John Bundy, kienet attwalment l-allegazzjoni relatata ma' John Bundy illi dwarha sar enfazi mill-partijiet.

Jirrizulta, kif jghid John Bundy, illi bejn ir-rikorrent u John Bundy, ma kienx hemm relazzjoni tajba, u Bundy jaghti x'jifhem fix-xhieda tieghu illi kienet tali relazzjoni hazina ta' bejniethom u l-argumenti illi kellhom regolarment illi wasslet sabiex il-programm illi huwa kienu ilu jtella għal diversi snin bl-isem ta' 'Bongu Bundy' twaqqaf hesrem.

Jirrizulta, għalhekk, illi meta l-intimati wasslu għall-konkluzjonijiet illi r-rikorrent kien attwalment waqqaf hu l-programm televiziv 'Bongu Bundy', dana kien ibbazat fuq fatti illi kien qieghed jistqarr John Bundy, u li gie anke rappurtat fuq mezz ta' xandir iehor, u fuq il-fatt inkontestat illi r-rikorrent kien attwalment il-persuna responsabbli għat-tmexxija tal-One TV, illi fuqu kien jittella l-programm ta' John Bundy illi twaqqaf.

Jirrizulta, għalhekk, illi l-kummenti illi saru fil-konfront tar-rikorrent kemm fl-artikolu illi deher fil-gazzetta l-Mument kif ukoll fuq l-ahbarjiet tan-NET TV ma humiex kummenti ibbazati fuq malizija u intenzjoni sabiex jagħmlu hsara lir-rikorrent, kif jikkontendu hu, izda huma kummenti sostanzjalment veri, gustifikabbli in vista tal-kummenti ta' Bundy, fuq allegat agir ta' persuna pubblika bhalma huwa r-rikorrent u li certament għandu jikkwalifika bhala kritika u mhux zeblih.

Għalhekk it-talba tar-rikorrenti ma tistax tintlaqa'.

## **Konkluzjoni**

Wara illi rat il-provi prodotti mill-partijiet,

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-intimati,

**Tichad** it-talbiet attrici.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku tar-rikorrent.

**Magistrat Francesco Depasquale**

**Marisa Bugeja**  
Deputat Registratur