FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis ghaxra (10) ta' Novembru 2016

Rikors Numru 226/09 FDP

Richard Cachia Caruana
(ID 139255M)

vs

Saviour Balzan

Il-Qorti:-

Rat ir-rikors promotur ippresentat fid-19 ta' Gunju 2009 fejn ir-rikorrent, filwaqt illi ghamel referenza ghal-artikolu ta' l-intinat intitolat "***Why people will protest and not vote***" ppubblikat fil-harga tal-Malta Today ta' l-24 ta' Mejju 2009, talab lill-Qorti tiddikjara tali artikolu bhala libelluz u malafmanti fil-konfront tar-rikorrent peress illi, fi kliem ir-rikorrenti, l-intimat jallega li "*l-attur iheggeg lill-haddiehor sabiex jikteb bi hdura, jincita mibgheda u jipprova jeqred lil min jikkritikah*" u ghalhekk tikkundanna lill-istess intimat ihallsu danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna, u partikolarment il-parti ta' l-artikolu indikat mir-rikorrent bhala malafmanti fil-konfront tieghu, illi kien jghid is-segwenti:

> *"After 22 years of mismanagement at Enemalta, Austin Gatt has woken up to the realities of bad governance and decides to turn the tables on us. Every time someone hints at bad governance, Gonzi's wayward general hits back with a vengeance reminiscent of the Mintodd years. And when Gatt cannot napalm his adversaries or critics, Gonzi uses Richard Cachia Caruana, the man who wants to become Malta's next EU commissioner. RCC acts as he has always acted, secretively calling on his army of sycophants to dish out bile and hate from their blogs and columns. They incite hatred and attempt to decimate any critics."* (sottollinear ta' dina l-Qorti)

Rat l-eccezzjonijiet ta' l-intimat ippresentati fit 2 ta' Lulju 2009 fejn eccepixxa illi dan huwa kaz ta' fair comment w huwa kumment intrinsikament ta' gudizzju politiku.
Rat illi l-intimat ippresenta eccezzjonijet ohra fil-5 ta' Novembru 2009 fejn, din id-darba, sahaq illi l-artikolu in kwistjoni ma kienx malafamanti w l-awtur kien qieghed jezercita d-dritt gurnalistiku tieghu li jikkummenta dwar fatti maghrufa u kurrenti f'dak il-periodu illi kellhom, fic-centru taghhom, lir-rikorrenti, li huwa persuna pubblika. Eccepixxa wkoll illi fl-artikolu kien hemm biss fatti maghrufa u *fair comment* dwar kwistjonijiet ta' interess pubbliku.

Rat illi fis-seduta tat-2 ta' Frar 2010, l-intimat irtira l-eccezzjonijiet tieghu ppresentati fit 2 ta' Lulju 2009 filwaqt illi zamm ferm l-eccezzjonijet minnu ppresentati fil 5 ta' Novembru 2009.

Rat ix-xhieda tar-rikorrenti, **Richard Cachia Caruana**, moghtija fit 2 ta' Frar 2010.

Rat illi fit 2 ta' Frar 2010 ir-rikorrenti iddikjara illi ma kellux aktar provi x'jippresenta.

Rat ix-xhieda ta' l-intimat, **Saviour Balzan**, moghtija fit 2 ta' Gunju 2010,

Rat ix-xhieda ta' l-intimat, Saviour Balzan, moghtija fid 9 ta' Novembru 2010 u d-dokumentazzjoni minnu esebita.

Rat ix-xhieda ta' **Dr Jeffrey Pullicino Orlando**, prodott mill-intimat u moghtija fl-1 ta' Marzu 2011.

Semghet ix-xhieda ta' **Daphne Caruana Galizia**, prodotta mill-intimat u moghtija fl-10 ta' Ottubru 2011.

Semghet ix-xhieda ulterjuri ta' Dr Jeffrey Pullicino Orlando illi nghatat fl-10 ta' Ottubru 2011.

Semghet il-konfront illi saret bejn Dr Jeffrey Pullicino Orlando u Daphne Caruana Galizia fl-10 ta' Ottubru 2011.

Semghet ix-xhieda tal-**Perit Jesmond Mugliette**, prodott mill-intimat u moghtija fid 9 ta' Lulju 2012.

Semghet ix-xhieda tal-**Perit Patrick Calleja**, prodott mill-intimat u moghtija fit 12 ta' Novembru 2012 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda in kontro ezami tal-Perit Patrick Calleja, moghtija fl-14 ta' Marzu 2014 u rat dokumentazzjoni addizzjonali minnu esebita dakinhar.

Semghet ix-xhieda ta' **John Dalli**, prodott mill-intimat u moghtija fis 27 ta' Gunju 2014.

Rat illi fis 27 ta' Awissu 2014, Steve Mallia talab illi jigi mdahhal fil-kawza '*in statu et terminis*' in vista ta' l-allegazzjonijiet illi kien ghamel fil-konfront tieghu John Dalli waqt ix-xhieda tieghu, liema talba giet michuda fil 25 ta' Settembru 2014 wara oggezzjoni ta' l-intimat.

Semghet ix-xhieda ulterjuri ta' John Dalli, prodott mill-intimat u moghtija fis 6 ta' Ottubru 2014 u rat id-dokumentazzjoni esebita lilu waqt il-kontro ezami tieghi.

Rat l-affidavit ta' John Dalli flimkien ma' serje ta' artikolu minnu esebiti, u ppresentat fil-15 ta' Ottubru 2014.

Semghet il-kontro ezami ta' John Dalli, prodott mir-rikorrent u moghtija fl 24 ta' Novembru 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Gordon Pisani**, prodott mill-intimat u moghtija fid-9 ta' Marzu 2015 u rat id-dokumentazzjoni esebita lilu waqt ix-xhieda tieghu.

Semghet ix-xhieda, in kontro ezami, ta' Gordon Pisani, moghtija fit-30 ta' April 2015.

Semghet ix-xhieda ulterjuri ta' Dr Jeffrey Pullicino Orlando, prodott mill-intimat u moghtija in ezami u kontro ezami fit-18 ta' Gunju 2015.

Semghet ix-xhieda, in kontro ezami kif ukoll in ri-ezami, ta' Richard Cachia Caruana, moghtija fid-19 ta' Ottubru 2015 kif ukoll rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ulterjuri ta' l-intimat Saviour Balzan moghtija fit-3 ta' Dicembru 2015.

Rat illi fit 18 ta' Frar 2016 il-Qorti giet infurmata illi l-partijiet kienu qed jippruvaw jittransigu u, ghal dan il-ghan, giet ippresentata nota konguntiva b'dikjarazzjoni ta' l-intimat illi kienet tghid is-segwenti:

> *"Issir referenza ghall-artikolu miktub minni ppubblikat fil-gurnal Malta Today ta' nhar il-25 ta' Mejju 2009 intitolat "Why people will protest and simplu NOT vote' u niddikjara li qieghed nirtira l-allegazzjonijiet maghmulha minni fil-konfront ta' Richard Cachia Caruana fl-istess artikolu, stante li nirrikonoxxi li dak li jiena allegajt bil-kliem 'RCC acts as he has always acted, secretively calling on his armuy of sycophats to dish out bile and hate from their blogs and columns. They incite hatred and attempt to decimate any critics' kien infondat u skorrett fil-konfront ta' Richard Cachia Caruana.*
>
> *Qieghed ghalhekk nirtira dak kollu li ktibt u insinwajt fl-istess artikolu stante li ma jista jintqal xejn hazin dwar l-integrita' u s-serjeta' ta' Richard Cachia Caruana fil-karriera tieghu.*
>
> *Niddikjara wkoll li accettajt li nhallas l-ispejjez legali ta' Richard Cachia Caruana f'dawn il-proceduri kif ukoll li naghmel donazzjoni lil istituzzjoni karitatevoli maghzula minn Richard Cachia Caruana li hija d-Dar tal-Provvidenza."*

Rat illi, permezz ta' rikors ppresentat mill-intimat fis-6 ta' April 2016, il-Qorti giet infurmata mill-istess intimat illi transazzjoni ma ntalhqietx u ghalhekk talab lill-Qorti sabiex tastjeni milli tiehu konjizzjoni tan-nota filwaqt illi tawtorizzahom jaghmlu s-sottomissjonijet finali.

Rat illi, fis-7 ta' April 2016, seduta stante, il-Qorti iddikjarat il-provi kollha bhala maghluqa u awtorizzat lill-partijiet jippresentaw is-sottomissjonijet taghhom.

Rat is-sottomissjonijiet tar-rikorrent ippresentati fl-14 ta' Lulju 2016.

Rat is-sottomissjonijet ta' l-intimat ippresentati fit 2 ta' Awissu 2016.

Rat illi fis-17 ta' Awissu 2016, l-intimat ippresenta rikors fejn talab lill-Qorti ma tiehux aktar konjizzjoni tad-dikjarazzjoni illi kien ippresenta l-istess intimat fit 18 ta' Frar 2016, liema rikors gie degretat minn dina l-Qorti fid-19 ta' Awissu 2016 fejn gie rilevat mill-Qorti stess illi, la darba t-transazzjoni ma sehhietx, dak kontenut fl-istess nota ma setax jigi kkunsidrat minn dina l-Qorti, ghalkemm ghandu jibqa jifforma parti mill-atti.

Rat illi fis-17 ta' Ottubru 2016, wara illi dahhlu s-sottomissjonjiet kollha tal-partijiet, il-kawza odjerna giet differita ghas-sentenza ghallum.

Ikkunsidrat

Il-Qorti, l-ewwel u qabel kollox, ma tistax ma tosservax id-dispjacir taghha ghal fatt illi l-kawza odjerna, li kienet tirrigwarda sebgha linji b'kollox f'artikolu ferm itwal, kellha ddum ghaddejja ghal aktar minn sebgha snin, fatt dettatt principalment mill-fatt illi waqt l-andament tal-kawza, il-provi illi kienu qed jitressqu unikament mill-intimat fuq medda ta' aktar minn sitt snin marru ferm oltre il-kontenut ta' l-artikolu illi minnu kien qieghed jilmenta ir-rikorrent. Tali thassib ghandu jsir wkoll dwar il-fatt illi, f'certi istanzi, l-mod kif kien qieghed jigi gestit il-produzzjoni tal-provi da' parte ta' l-intimat seta sar b'mod aktar efficjenti u spedit – madanakollu, la darba dina l-Qorti qieghda hemm mhux biss biex isir il-gustizzja, izda, aktar u aktar, biex tidher li qieghda ssir il-gustizzja, l-intimat inghata l-fakulta' kollha li jressaq il-provi kollha tieghu, anke meta dana fisser li jressaq l-istess xhieda diversi drabi u jistaqsihom l-istess domandi ghal diversi drabi.

Il-Qorti tosserva wkoll, bi dispjacir, illi l-partijiet, f'mument minnhom, kienu ser jaslu ghal transazzjoni, tant illi giet redatta dikjarazzjoni li giet ppresentata lill-Qorti, izda, sussegwentement, ghal ragunijet illi jafu biss il-partijiet, tali dikjarazzjoni giet irtirata mill-intimat u, di fatti ma hijiex qieghda tigi kkunsidrata minn dina l-Qorti ghal fini ta' provi, u t-transazzjoni bejn il-partijiet falliet.

Ikkunsidrat

Jirrizulta illi r-rikorrent, ghal zmien konsiderevoli kien l-Assistant Personali tal-Prim Ministru u Kap tas-Segretarjat ta' l-istess Prim Ministru Dr Eddie Fenech Adami u sussegwentement, mad-dhul ta' Malta fl-Unjoni Ewropea, fis-sena 2004 sar ir-Rappresentant Permanenti Ewlieni ta' Malta fl-Unjoni Ewropea, kariga illi huwa kellu anke fil-mument illi nkieb l-artikolu meritu tal-kawza odjerna.

Jirrizulta, mill-assjem tal-provi kif prodotti quddiem dina l-Qorti, illi l-intimat, li kien l-awtur ta' l-artikolu illi dwaru kien qieghed jilmenta r-rikorrent, waqt illi kien qieghed jikkummenta in generali dwar il-Gvern ta' dak iz-zmien, immexxi mill-Partit Nazzjonalista, illi kellu bhala Prim Ministru Dr Lawrence Gonzi, allega li meta l-istess Dr Gonzi ma kienx f'pusizzjoni illi jaghmel uzu minn Dr Austin Gatt, dak iz-zmien Ministru, biex, kif jghid l-intimat "*napalm his adversaries or critics*", huwa kien jaghmel uzu mis-servizzi tar-rikorrent illi, kif ddeskrivieh l-intimat "*acts as he has always acted, secretively calling on his army of sychopants to dish out bile and hate from their blogs and columns*".

Jirrizulta illi r-rikorrent hassu aggravat minn dina l-insinwazzjoni maghmula mill-intimat u ghalhekk nieda l-proceduri odjerni.

Jirrizulta illi, waqt il-proceduri odjerni, l-intimat ressaq diversi xhieda illi, fiz-zmien, kellhom differenzi mal-Partit Nazzjonalista, li fih kien involut ir-rikorrent, fosthom Dr Jeffrey Pullicino Orland, il-Perit Jesmond Mugliette u John Dalli, bil ghan illi jipprova illi r-rikorrent kien dejjem il-mohh wara l-attakki illi kienu qed isiru fil-konfront taghhom minn-gazzetti, principalment The Times of Malta u The Malta Independent u minn Daphne Caruana Galizia, kemm permezz ta' artikoli taghha kif ukoll mis-sit elettroniku taghha www.daphnecaruanagalizia.com.

Jirrizulta wkoll illi l-intimat ressaq wkoll lill-Perit Patrick Calleja, iben il-Brigadier Maurice Calleja u hu Meinrad Calleja u Clarissa Calleja, bil-ghan illi juri l-involviment ta' l-istess rikorrent fi storja li kienet wasslet ghal-rizenja bikrija tal-Brigadier Maurice Calleja minn Kap tal-Armata ta' Malta.

Jirrizulta wkoll illi l-intimat allega illi r-rikorrent kien jaghmel uzu mis-servizzi ta' gurnalisti varji biex jghaddi l-messaggi illi huwa jixtieq, izda ghajr ghax-xhieda ta' Daphne Caruana Galizia w ix-xhieda ta' l-intimat stess, l-intimat ma pproduca ebda gurnalist iehor biex jikkorrobora l-akkuza illi l-intimat kien qieghed jaghmel fil-konfront tar-rikorrent.

Jirrizulta, waqt il-gbir tal-provi, illi la Dr Jeffrey Pullicino Orland u lanqas il-Perit Jesmond Mugliette, li kienu xhieda li ressaq l-intimat, ma setghu jikkorroboraw l-akkuzi illi kien qieghed jaghmel l-intimat u hadd minnhom ma qal illi r-rikorrent kien wara l-attakki illi saru fil-konfront taghhom. Mill-banda l-ohra, John Dalli, fix-xhieda estensiva u ripetuta tieghu, regolarment allega illi r-rikorrent kien il-persuna w il-mohh wara l-attakki ripetuti li saru fil-konfront tieghu minn gurnalisti bhal Ivan Camilleri, Steve Mallia, Lou Bondi u Daphne Caruana Galizia.

Jirrizulta, madanakollu, illi apparti x-xhieda ta' Daphne Caruana Galizia, li kategorikament cahdet li r-rikorrent qatt seta influenzaha fl-artikoli illi hija tikteb filwaqt illi ikkonfermat il-hbiberija illi kemm hi kif ukoll ir-ragel taghha ghandhom mar-rikorrent illi tmur lura hafna snin, l-intimat ma ressaq ebda mill-gurnalisti illi huwa jsemmi sabiex jikkorroboraw dak allegat minnu u minn John Dalli – anzi, meta Steve Mallia talab sabiex jidhol fil-kawza sabiex jirribatti ghal dak allegat fuqu minn John Dalli, l-intimat oggezzjona ghal tali talba u ma ressqux bhala xhud.

Jirrizulta, mill-banda l-ohra, illi kemm tramite l-intimat, kif ukoll waqt ix-xhieda ta' John Dalli, gew prodotti numru konsiderevoli ta' artikoli illi dehru fil-gazzetti lokali w fuq l-internet, liema artikoli kienu intizi sabiex jippruvaw illi r-rikorrent kien wara il-kitba ta' tali artikoli.

Ikkunsidrat

Jirrizulta illi d-difiza mqajjma mill-intimat fil-kawza odjerna kienet illi l-kummenti illi saru kienu '*fair comment*' fuq fatti sostanzjalment veri illi kienu ta' interess pubbliku dwar fatti maghrufa u kurrenti li kellhom fic-centru ir-rikorrent, illi huwa persuna pubblika.

Ikun opportun, ghalhekk, illi wiehed jifhem x'inhuma l-principji illi jirregolaw id-difiza tal-'*fair comment*' bil-ghan illi wiehed ikun jista jikkunsidra l-fatti kif fuq stabbiliti fl-ottika tal-principji generali tad-difiza tal-'*fair comment*'.

Qabel xejn, madanakollu, ghal dak li jirrigwarda l-livell ta' kritika li seta jigi suggett ghaliha r-rikorrent, il-Qorti taghmel referenza ghal dak illi qalet il-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kaz **Voronezhe**, fejn qalet:

> *The Court notes that civil servants acting in an official capacity are, similarly to politicians albeit not to the same extent, subject to wider limits of acceptable criticism than a private individual*

Ghalhekk, il-livell ta' kritika illi setghet issir lir-rikorrenti, bhala persuna pubblika, hija oghla minn dik ta' persuna privata, izda, madanakollu, ma ghandhiex tkun daqstant liberali daqs dik permessa fil-konfront ta' persuni politici.

Dwar id-difiza tal-'*fair comment*', fuq imsemmija, **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, tali principji gew minnha mhaddna u spjegati kif gej :

> *... dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust* tkun *tgħodd, jeħtieġ 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; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jweġġa' lil dak li jkun.*

Tali taghlim huwa anke riflessa fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' '*fair comment*':

> *... 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.*

Finalment, dwar il-kuncett ta' '*value judgment*', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567,para 43, tghid is-segwenti:

> *... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it ."*

Jirrizulta car, ghalhekk, mill-gurisprudenza fuq imressqa, illi hemm sabiex id-difiza ta' '*fair comment*' u '*value judgment*' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

Ikkunsidrat

Jirrizulta ukoll illi difiza ohra mressqa mill-intimat fil-kawza odjerna hija illi fil-kitba tieghu huwa kien qieghed jezercita' d-dritt gurnalistiku tieghu meta kien qieghed jaghmel tali kummenti.

Dwar id-dritt tal-liberta ta' l-espressjoni w id-dritt tal-gurnalist, il-Qorti thoss illi ghandha taghmel referenza ghall- 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, fejn 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*
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> *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"*

L-istess Qorti tkompli tghid:

> *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.*

Fil-kawza Delfi AS vs Estonia deciza mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013 intqal is-segwenti:

> *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 (see Chauvy and Others, cited above, § 70; Pfeifer v. Austria, no. 12556/03, § 35, 15 November 2007; and Polanco Torres and Movilla Polanco v. Spain, no. 34147/06, § 40, 21 September 2010) 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 (see A. v. Norway, no. 28070/06, § 64, 9 April 2009, and Axel Springer AG v. Germany [GC], no. 39954/08, § 83, 7 February 2012).*
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> *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 (see Hachette Filipacchi Associés v. France, no. 71111/01, §*

43, 14 June 2007; MGN Limited v. the United Kingdom, no. 39401/04, § 142, 18 January 2011; and Axel Springer AG, cited above, § 84)

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 (see Axel Springer AG, cited above, § 87, and Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, § 106, ECHR 2012, with further references to the cases of Hachette Filipacchi Associés (ICI PARIS), cited above, § 41; Timciuc v. Romania (dec.), no. 28999/03, § 144, 12 October 2010; and Mosley v. the United Kingdom, no. 48009/08, § 111, 10 May 2011)

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 (see Axel Springer AG, cited above, §§ 89-95, and Von Hannover (no. 2), cited above, §§ 108-113).

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent hassu malafamat meta l-intimat allega illi huwa jahdem bil mohbi ("*secretively*") billi jqabbad lill persuni leali lejh, li l-intimat jiddeskrivihom bhala "*his army of sycophats*", sabiex dawna jincitaw fil-pubbliku mibgheda u stmerrija fil-konfront ta' terzi persuni illi l-istess rikorrent ma jkunx qieghed jaqbel mieghu.

Jirrizulta, madanakollu, illi ghalkemm l-intimat kellu kull opportunita' illi jressaq x-xhieda kollha necessarja, u, di fatti, ressaq diversi persuni li setghu, minn zmien ghal zmien, kellhom differenzi mar-rikorrent in vista tal-karigi illi huwa kellu, kemm pubblici kif ukoll fi hdan il-Partit Nazzjonalista, imkien ma jirrizulta ppruvat li huwa minnu li r-rikorrent jqabbad lill terzi persuni leali lejh biex jattakkaw u jkissru lill min ma jaqbilx mar-rikorrent, kif kien qieghed jaghti x'jifhem l-intimat.

Jirrizulta wkoll illi r-rikorrent, fil-karigi illi huwa kellu, kemm fi hdan il-Gvern mmexxi mill-Partit Nazzjonalista kif ukoll fil-Partit Nazzjonalista, dejjem kellu kuntatt mal-media lokali u ma' gurnalisti varji, in vista tan-natura tax-xoghol illi l-karigi li kellu kienu jirrikjedu, izda ma ngiebet ebda prova li huwa kien, b'xi mod, qieghed jipprova jimmanipula lill xi gurnalisti biex jaghmel hsara lill-terzi, kif qieghed jallega l-intimat fl-artikolu tieghu.

Jirrizulta anzi illi l-intimat stess jaccetta, fix-xhieda tieghu (fol 21), li fiz-zmien li Malta kienet qieghda tinnegozja d-dhul taghha fl-Unjoni Ewropea, liema negozjati kienu mmexxija mir-rikorrent, ir-rikorrent kien jikkomunika anke ma' l-intimat stess u, kif jistqarr l-istess intimat, "*qatt ma kien jghidli direttament ghandi nikteb hekk*".

Jirrizulta, ghalhekk illi ghalkemm huwa minnu illi r-rikorrent kien, tul l-attivita tieghu fil-kamp pubbliku, ikun in kuntatt ma' varji persuni involuti fil-mezzi tax-xandir, minn imkien ma jirrizulta ppruvat li r-rikorrent qatt kien jikkontrolla x'kellu jinkiteb mill-gurnalisti.

Jirrizulta, di fatti, illi Daphne Caruana Galizia, illi kienet **<u>l-unika</u>** xhud gurnalista li pproduca l-intimat in sostenn tal-argument tieghu, u li kienet regolarment tissemma bhala il-persuna l-aktar vicina tar-rikorrent, cahdet kategorikament illi qatt giet influenzata mir-rikorrent fil-kitba taghha u,

kif tghid l-istess Daphne Caruana Galizia "*jiena nikteb dak li nhoss li ghandi nikteb jien u jiena biss inhallas il-prezz tieghu ghax dawk huma affarjiet li nikteb jien u hadd ma jigi jghidli x'ghandi nikteb*".

Jirrizulta ghalhekk, illi ghalkemm dak li kiteb l-intimat jista jitqies bhala "*kumment*" li kien qieghed jaghmel l-istess intimat dwar ir-rikorrent, certament ma jistax jitqies bhala "*kumment gust*", peress illi ma huwiex ibbazat fuq fatti sostanzjalment veri, izda huwa bbazat fuq supposizzjonijiet u teoriji illi ma sabu ebda konfort mix-xhieda prodotti mill-istess intimat u certament ma jistax jigi meqjus bhala kumment *"tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir jew insolenza"* kif qalet il-Qorti Maltija fil-kawza **Galea vs Agius** fuq imsemmija.

Ikkunsidrat

Dwar danni illi qed jintalbu mir-rikorrenti a tenur tal-Artikolu 28 tal-Kap 248, il-Qorti taghmel referenza ghal argumentazzjoni imressqa mill-Prim Istanza, kkonfermata fi stadju ta' appell, fil-kawza '**Emanuel Cuschieri vs Daphne Caruana Galizia**' deciza fid 29 ta' Mejju 2015, fejn il-Prim Istanza kienet qalet:

> *"... għar-rigward tal-kumpens tad-danni mġarrba għandu jiġi osservat li l-liġi tagħti grad ta' diskrezzjoni dwar l-ammont li tista' tordna lill-parti diffamanti li tħallas lill-parti libellata. Il-liġi tqiegħed biss ammont massimu li jista' jingħata. F'dan ir-rigward, jidher li l-kriterju għaqli li l- qorti għandha żżomm quddiem għajnejha huwa dak tas-sens ta' proporzjon li jqis il-fatt tal-inġurja, tal-gravità tagħha, tal-persuna (jew il-kariga) li lejha l-inġurja hija diretta, flimkien mal-pubbliku li dik l-inġurja tkun trid tilħaq;*
>
> *Illi l-qorti qiegħda tqis, fost l-oħrajn, li l-fatti allegati mill-artikolista ma jirriżultawx pruvati, illi x-xiljiet ta' reati jew imġiba kriminuża tal-attur iġġib magħha sanzjonijiet min-naħa tal-awtoritajiet u stmerrija mill- qarrej tal-artiklu, u li l-artikolista mħarrka ma wriet l-ebda sogħba għar- rimarki li għaddiet fil-konfront tal-attur;"*

Fil-kaz odjern, ghalkemm l-intimat ma kien qieghed jattribwixxi ebda reat kriminali fil-konfront tar-rikorrent, l-allegazzjonijiet illi saru fil-konfront tar-rikorrenti kienu tali illi jwasslu lill-qarrej komuni sabiex jikkonkludi li r-rikorrent kien l-mohh wara hafna attakki fil-pubbliku li kienu qed isiru lill varji persuni pubblici, liema konkluzjoni, minnha nniffisha twassal ghal konsiderazzjonijiet li, possibbilment, minnhom innifishom, jitfghu dell ikrah fuq ir-rikorrent u l-operat tieghu.

Madanakollu, ir-rikorrent, in vista tal-karigi illi huwa kellu, kemm fil-Partit Nazzjonalista kif ukoll fil-gvern tal-gurnata, kien dejjem f'pusizzjoni illi setghet dejjem tattira livell ta' kummenti fil-konfront tieghu, ghalkemm kummenti bhal dawk illi ghamel l-intimat ma kienux flokhom u setghu jigu facilment evitati.

Dawna l-konsiderazzjonijiet kollha ser jigu kkunsidrati fl-ghoti tad-danni.

Il-Qorti, finalment, thoss illi ma tistax ma tosservax, kif gia ghamlet f'okkazzjonijet ohra, illi l-media u l-mezzi tax-xandir, illum il-gurnata, bil-proliferazzjoni ta' mezzi elettronici u immedjati ta' tqassim ta' informazzjoni, ghandha rwol krucjali f'socjeta demokratika, peress illi hija meqjusa mill-qarrej komuni bhala il-mezz kif tali qarrej jistgha jinghata informazzjoni aktar dettaljata u immedjata dwar avvenimenti li jkunu qed jigru madwaru. Huwa, ghalhekk, proprju in vista ta' tali zvilupp importanti f'dawna z-zminijiet, illi kull min jopera fil-mezzi tax-xandir, ghandu jutilizza

aktar kawtela u responsabbilta’ meta jghaddi xi kumment u/jew iwassal xi ahbar, stante illi tali kumment jew ahbar, illum il-gurnata, jista jkollu ripekussjonijet ferm aktar gravi u serji minn qatt qabel, u dana jista, eventwalment ikun aktar ta’ hsara milli ta’ gid ghal socjeta demokratika bhal taghna illi thaddan id-dritt tal-liberta’ ta’ l-espressjoni.

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tilqa it-talbiet attrici, u ghalhekk

Tiddikjara l-artikolu intitolat "***Why people will protest and not vote***" ppubblikat fil-karga tal-gazzetta Malta Today tal-24 ta’ Mejju 2009 u partikolarment il-kliem li ntqalu fil-konfront tar-rikorrenti bhala libelluzi u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna lill-intimat sabiex ihallas lir-rikorrent is-somma ta' tlett elef Euro (€3,000) in linea ta' danni a tenur tal-Artikolu 28 tal-Kap 248.

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

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur