



Fil-Qorti tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar l-Erbgha sittax (16) ta' Novembru 2016

Libell Nru 1/15

Edgar Bonnici Cachia

vs

Daphne Anne Caruana Galizia
(ID 450664M)

Il-Qorti,

Rat l-akkuzi migjuba kontra l-kwerelata Daphne Caruana Galizia permezz ta' tahrika privata minn Edgar Bonnici Cachia fl-20 ta' Novembru 2014 (fol 15), fejn l-istess Daphne Caruana Galizia giet akkuzata:

Talli, permezz ta' sit/pagna ta' l-internet www.daphnecaruanaGalizia.com fid-19 ta' Novembru 2014 u fil-granet ta' wara, permezz ta' artikolu elettroniku intitolat "***Can we please bear in mind that Bonnici Cachia himself has a seriously bad criminal record***", attribwiet lill-kwerelanti fatti determinanti bi skpe illi jofferndu l-unur w il-fama tieghu u jesponuh ghar-redikolu, u dana bi ksur tal-Artikolu 11 tal-Kap 248 u l-Artikolu 18 tal-Kap 9.

Rat l-artikolu meritu tal-kawza odjerna fejn, b'referenza ghal storja li tintwera intitolata '***Defamation case against Fr Charles Fenech heard behind closed doors***', l-intimata kiteb artikolu intitolat '***Can we please bear in mind that Bonnici Cachia himself has a seriously bad criminal record?***' u li jghid is-segwenti:

The police are prosecuting that Dominican friar who has been in the news lately, Charles Fenech, on the basis of a slander complaint filed against him by one Edgar Bonnici Cachia.

The interesting thing is that the press does not see fit to mention the very salient fact that Bonnici Cachia is not the most savoury of individuals himself, and that his motives might well be suspect.

While Charles Fenech faces proceedings for taking advantage of the vulnerable, Edgar Bonnici Cachia has an actual conviction for abuse of the vulnerable in his care (an old lady, in his case, who trusted him) and has served a prison term for just that, leaving

jail not so long ago.

I had uploaded the Appeals Court judgement, which confirmed his prison term, on this website some days ago.

And beyond that, in the 1980s, Bonnici Cachia had been jailed in Egypt along with three co-conspirators, one Maltese and two British, for taking part in a plot to kill a former Libyan prime minister who then lived in Egypt because Muammar Gaddafi had a price on his head. The plot did not succeed because the Egyptian secret service rumbled it. The British conspirators were deported to Britain on release from the Egyptian jail, and were met off the plane by British police who took them into custody. The Maltese conspirators – Edgar Bonnici Cachia included – were deported to Malta but did not go to jail because Muammar Gaddafi was Mintoff's friend, Mintoff was prime minister, and Bonnici Cachia himself had been a Labour Party candidate in the 1981 general election.

When I wrote about all this a couple of years ago, Bonnici Cachia actually had the gall to file a complaint with the police against me too, despite all this being documented fact, and I am currently facing criminal defamation proceedings at his request, for reproducing the pure, unadulterated facts that were widely reported by the international press and wire services at the time.

This man is a truly suspicious character – do not aid and abet him by working to his agenda. I have no doubt that Charles Fenech really did fool around with that woman. But equally, I have no doubt that he himself is the victim of a very nasty character with a seriously bad criminal record, who is out to get what he can from maximising the situation. I imagine he wouldn't be averse to a spot of blackmail, either, and it certainly looks as though that's the way things are going or have gone already.

Semghet ix-xhieda tal-kwerelant **Edgar Bonnici Cachia** moghtija fil 25 ta' Frar 2015 u rat il-kwerela minnu ppresentata u kkonfermata kif ukoll sentenza datata 27 ta' April 1989 fl-ismijiet 'Edgar Bonnici Cachia vs Dr Michael Frenzo bhala editur tal-“In- Taghna”.

Rat illi fil 25 ta' Frar 2015 il-prosekuzzjoni iddikjarat illi ma kellhiex aktar provi x'tipresenta.

Semghet ix-xhieda tal-kwerelata **Daphne Caruana Galizia** moghtija fil 25 ta' Marzu 2015 u rat id-dokumentazzjoni minnha esebita, fosthom is-segwenti:

- sentenza tal-Qorti tal-Appell Kriminali fl-ismijiet '*Il-Pulizija vs Edgar Publio Bonnici Cachia*' datata 12 ta' Awissu 2010 fejn il-Qorti ikkonfermat is-sentenza ta' l-ewwel Qorti li kienet sabitu hati ta' frodi innominata skond l-Artikolu 309 tal-Kap 9 u kkundannatu piena ta' prigunerija ta' sittax-il xahar,
- sentenza tal-Qorti tal-Appell fl-ismijiet '*Maurice Mifsud Bonnici ghan-nom u in rapprezentanza tal-Korporazzjoni Telemalta vs Edgar Bonnici Cachia*' deciza fl-20 ta' Gunju 2002 fejn huwa gie kkundannat ihallas is-somma ta' Lm12,664.47,5 ghal kiri ta' servizzi telefonici.
- sentenza tat-Tribunal ghal Tabliet Zghar datata 18 ta' Gunju 2002 fl-ismijiet '*Vodafone Malta Limited vs Edgar Bonnici Cachia*' fejn huwa gie kkundannat ihallas is-somma ta' Lm1,321.96 ghal servizzi resi in konnessjoni ma' mobile phone.

- sentenza tal-Prim Awla tal-Qorti Civili datata 5 ta' Novembru 2009 fl-ismijiet '*Grazio Ebejer vs Edgar Bonnici Cachia*' fejn huwa gie kkundannat jizgombra minn garage gewwa San Gwann u jhallas arretrati ta' kera w konsum tad-dawl u ilma.
- Rapport illi deher fil-gazzetta 'In-.... Taghna' datata 14 ta' Novembru 1981 intitolat "*Kandidat Mintoffjan kundannat jumejn habs ... ghax ma hallasx bolli ta' impjegata*" u li kienet taghmel referenza ghall-sentenza ta' jumejn habs u multa ta' Lm130 moghtija lilu mill-Qorti tal-Magistrati ffit jiem qabel.

Rat il-fedina penali tal-kwerelant ippresnetata mill-prosekuzzjoni fis 17 ta' Gunju 2015.

Semghet ix-xhieda ta' **James Farrugia**, Direttur tal-Protocol fi hdan il-Ministeru tal-Affarjiet Barranin, moghtija fit 13 ta' Jannar 2016 fejn l-istess Farrugia esebixxa, animo ritirandi, file ta' l-istess Ministeru tal-Affarjiet Barranin in konnessjoni mal-kaz tal-kwerelant gewwa l-Egittu, minn liema file il-Qorti esportat dawk id-dokumentazzjoni rilevanti ghal kaz u rritornat il-file lura lill-Ministeru tal-Affarjiet Barranin.

Rat il-korrispondenza rilevanti riprodotta mill-file fuq imsemmi, li kienu s-segwent:

Ittra indirizzata lill- '*Security Courts*' datata 4 ta' April 1985 intitolata '*Egyption Security Police vs Tony Gill, Godfree Shiner, Romeo Schembri u Edgar Bonnici Cachia*' li fiha jinghad is-segwent:

"I present with respect the following:

1. *That the police arrested me on the 23rd October 1984, when I arrived in the Cairo Airport and up to now did not take actions against me in courts or make a decision (sic) about the case, for the alledged case of the former Libyan Prime Minister El Bakush*
2. *That the courts give to the Security reasonable time to put the case for hearing*
3. *That if the Security did not put the case for hearing, the Security given the reason to the Honrable Court*
4. *That if the Security did not put the case for hearing, or did not given the reason to the court, I asked to the court with respect to declare the case closed.*

Presented with respect

Edgar Bonnici Cachia"

Ittra indirizzata lill- '*Security Courts*' datata 25 ta' April 1985 intitolata '*Egyption Security Police vs Tony Gill, Godfree Shiner, Romeo Schembri u Edgar Bonnici Cachia*' li fiha jinghad is-segwent:

"I present with respect the following:

1. *That the security police arrested me on the 23rd October 1984, when I arrived in Cairo Airport and up to now did not take actions against me in courts or make a decision about the case for the alledged case of the former Libyan Prime Minister El Bakush.*
2. *That the (six) 6 months since my arrest stipulated by the Egyptian Law are elapsed but the Minister of Interior have the right to extend the (six) 6 months for some reasons.*
3. *I asked to the Courts with respect to give reasonable time to the Minister of Interior General Ahmen Rushdi to give the Courts the reason why I am still arrested.*

4. *I would like to inform to the Courts that the statement that the Security Police putting in front of the world is all misleading and because of this statement and the period of my arrest, I suffered considerable damages and I will be suffer more damages in my private life and also in my business. Because of my arrest, I was deprived of my family. I ask to the Courts with respect to take all this facts in consideration.*
5. *At the end, I asked the Courts with respect, to make a decision about my arrest and about the validity of my arrest when the Minister of Interior answer this protest. Presented with respect*

Edgar Bonnici Cachia”

Ittra indirizzata lill Mr Angelo Fenech datat 7 ta' Jannar 1985, li tghid is-segwent:

“Dear Angelo,

I send you this telex first of all to inform you that I am in good health.

The British Council visit me and Romeo every week and help us a lot. I know that we have an Ambassador for Egypt (residing in Malta) I don't know why the Ambassador or any other Maltese didn't visit us.

We need the Malta Ambassador visiting us and if possible try to send us the Malta Gazette from the 23rd October. Can you try to arrange something for us.

Don't believe what the international gazettes say about us. We are victims of a Maltese mad person. I don't mention the name of this person lie on us now, but when I come every one know the name of this person.

Please show this letter to all my friends, especially to my friends in the GWU and tell my friends to write me letters c/o British Council, British Embassy, Cairo, Egypt.

Best Regards

Edgar Bonnici Cachia.”

Il-kwerelant ikkonferma illi dawna t-tlett ittri kienu minnu miktuba waqt illi huwa kien qiegħed l-Egittu.

Rat artikolu ppubblikat fil-gazzetta Ingliza the Sunday Times fit 2 ta' Dicembru 1984 fejn isir referenza għal Statement mahrug mill-Gvern Libyan u mghoddi lill-gazzetta, liema artikolu jghid, fost affarijiet ohra:

“To this end, the statement said, “the revolutionaru movement in Libya planned to recruit a killing squad which sympathised with Egypt”. The man recruited to organise the plot was Edgar Bonnici Cachia, a one-time Labour party candidate for the Maltese parliament and now in jail in Cairo. According to Qaja, the Libyans were aware at the time that “Edgar co-operates with the CIA and the Israeli intelligence service.”

Rat ukoll 'Protocol of Handing Over Accused Persons' datat 2 ta' Mejju 1985, iffirmit bejn il-Gvern Egizzjan u il-Gvern Malti li jipprovdi, fost affarijiet ohra, “in accordance with the good relations that exist between the Government of the Republic of Malta and on the basis of

reciprocity, for the basis of handing over the following accused persons Mr Edgar Bonnici CACHIA”.

Semghet ix-xhieda ta' Edgar Bonnici Cachia in rigward ta' dina d-dokumentazzjoni esebita formanti parti minn file akbar ppresnetat animo ritirandi mill-Ministeri tal-Affarjiet Barranin u moghtija fl-14 ta' Gunju 2016.

Rat sensiela ta' artikoli esebiti mill-intimata in rigward l-attent ta' qtil ta' l-ahhar Prim Ministru Libyan, Abdul Hamid Bakkush qabel li l-Kurunell Gaddafi ha il-poter gewwa l-Libya minghand ir-Re Idris, liema artikoli deheru fil-gazzetta The New York Times tas-17 ta' Novembru 1984, tat 18 ta' Novembru 1984 u tas 7 ta' Frar 1985 fejn anke jissemma l-kwerelant Edgar Bonnici Cachia bhala wiehed mill-persuni illi kienu gew mibghuta mill-Gvern Libyan sabiex joqtlu lill Bakkush.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fit 28 ta' Settembru 2016, wara liema data il-kawza thalliet ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta, mill-provi prodotti u mix-xhieda tal-kwerelant Edgar Bonnici Cachia, illi huwa hassu malafamat bil-kontenut tal-artikoli illi kiteb l-akkuzata kwerlata Daphne Caruana Galizia fit 19 ta' Novembru 2014 fejn l-istess Caruana Galizia semmiet il-kaz tieghu gewwa l-Egittu.

Jirrizulta illi l-kwerelant jikkontendi illi huwa qatt ma gie akkuzat b'xi akkuzi dwar attentant ta' qtil tal-Prim Ministru Bakush u qatt ma kien hemm xejn fil-konfront tieghu.

Jirrizulta, madanakollu, illi l-akkuzat stess, f'korrispondenza illi huwa baghat waqt li kien arrestat gewwa l-Egittu, jammetti illi l-arrest tieghu hija in konnessjoni ta' akkuzi li huwa kien involut f'kaz illi huwa jiddeskrivi bhala “the alledged case of the former Libyan Prim Minister El Bakush”.

Jirrizulta wkoll illi l-kwerelant stess jammetti illi huwa ghamel aktar minn sitt xhur u ghaxart ijiem arrestat gewwa l-Egittu, u di fatti attwalment jidher illi huwa gie arrestat fit 23 ta' Ottubru 1984 u gie mghoddi f'idejn l-awtoritajiet Maltin fit 2 ta' Mejju 1985.

Ikkunsidrat

Jirrizulta illi l-kwerelant gharraf lill dina l-Qorti illi huwa kien ghamel aktar minn sitt xhur arrestat, izda filwaqt li ghamel l-ewwel ftit jiem qieghed jigi interrogat gewwa l-habs, wara ftit jiem intbghat gewwa sptar u kien qieghed jinzamm hemmhekk konfinat sakemm eventwalment gie mghoddi f'idejn l-awtoritajiet Maltin.

Jirrizulta illi l-kwerelant gharraf ukoll lill-Qorti illi huwa nieda l-proceduri odjerni peress illi hassu malafamat bil-fatt illi l-kwerelata semmiet il-kwistjoni tal-Egittu.

Jirrizulta, madanakollu, illi harsa lejn il-kontenut tal-parti tal-artikolu li dwaru ipprotesta l-kwerelant turi illi l-fatti kollha minnha imsemmija gew attwalment ippruvati kemm mix-xhieda tal-kwerelant stes kif ukoll mid-dokumentazzjoni esebita.

Jirrizulta, di fatti, illi l-akkuzat kien gie arrestat mill-awtoritajiet Egizzjani in konnessjoni mal-kaz tal-allegat attentant ta' qtil fuq il-Prim Ministru depost minn Ghaddafi, jigifieri Abdul Bakush, u mieghu kien hemm arrestat Malti iehor u zewgt Inglizi.

Jirrizulta wkoll illi l-kwerelant inzamm arrestat ghal aktar minn sitt xhur u, wara, gie deportat minn l-Egittu u inghata f'idejn l-Awtoritajiet Maltin.

Jirrizulta wkoll, fatt mhux kontestat mill-kwerelant stess, illi huwa kien kandidat tal-Malta Labour Party ghall-elezzjoni tas-sena 1981.

Jirrizulta, ghalhekk, illi l-fatti kollha kif imsemmija mill-kwerelata kienu sostanzjalment korretti.

Ikkunsidrat

Qabel ma tghaddi ghad-decizjoni finali taghha, il-Qorti thoss illi ghandha taghmel dawna l-konstatazzjonijiet legali.

Kif intqal mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kawza **Axel Springer AG vs Germany** deciza fis-7 ta' Frar 2012,

*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 tkompli tghid l-istess Qorti,

*Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them (see *News Verlags GmbH & Co. KG v. Austria*, no. 31457/96, § 56, *ECHR* 2000-I; *Dupuis and Others v. France*, no. 1914/02 § 35, *ECHR* 2007-VII; and *Campos Dâmaso v. Portugal*, no. 17107/05, § 31, 24 April 2008).*

....

*Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Pedersen and Baadsgaard*, cited above, § 71).*

Il-Qorti ma ghandha ebda dubju, fil-kaz odjern, illi l-kwerelata, qabel ma ghaddiet il-kummenti li taghhom l-kwerelant hassu malfamat, ghamel l-investigazzjonijiet kollha necessarji sabiex tassikura illi l-informazzjoni illi kellha kienet wahda korretta, u dana jirrizulta mid-dokumentazzjoni minnha esebita waqt il-mori tal-kawza.

Il-Qorti ma tistax ma tosservax, ukoll, illi xoghol gurnalist huwa illi jgharraf lill qarrej ordinarju dwar fatti u informazzjoni in relazzjoni ma' stejjer illi jkunu ghaddejjin f'dak iz-zminijiet, u dana jsir billi jwassal lill-qarrejja dik l-informazzjoni kollha mehtiega sabiex il-qarrej ikun jista jkollu stampa cara u kompleta dwar persuni u sitwazzjonijiet li jkunu, f'dak il-hin, qed jigu rappurtati mill-mezzi tax-xandir.

Il-Qorti tosserva illi, ghalhekk, illi a differenza ta' dak illi jippretendi l-kwerelant, l-informazzjoni illi ghaddiet l-kwerelata lill-qarrej ordinarju kienet wahda siewja in vista tal-fatt illi, f'dak iz-zminijiet, meta l-kwerelata ppubblikat l-istorja, il-kwerelant kien involut f'kwistjoni illi kienet qieghda tigi ampjament irrappurtata fuq il-mezzi tax-xandir u li kienet tirrigwarda akkuzi fil-konfront ta' qassis, liema akkuzi kienu serji u kienu wasslu sabiex jinbdew proceduri fil-konfront tieghu.

Ghalhekk, il-Qorti thoss illi ghandha taghmel taghha dak li stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** deciza fit-3 ta' Frar, 2012, fejn qalet:

“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f'socjeta' demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa' allegazzjoni mhux pruvata kif trid il-Ligi. F'dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista' wkoll ikun tollerat.”

Konkluzjoni

Il-Qorti

Wara illi semghet il-provi kollha prodotti u t-trattazzjoni ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tillibera lill-kwerelata Daphne Caruana Galizia mill-akkuzi kollha migjuba kontra taghha.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur