FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn tnax (12) ta' Dicembru 2016

Rikors Numru 196/14 FDP

Silvio Scerri
(ID 338767M)

vs

John Bundy
(ID 196860M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fid 9 ta' Gunju 2014 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu intitolat '**Silvio Scerri cut Norman Vella's post – John Bundy**' illi deher fil-gazzetta Times of Malta fil-harga taghha tal-5 ta' Gunju 2014, liema storja r-rikorrent sahaq illi ghamilha l-intimat, insista illi kienet tikkontjeni allegazzjonijiet u insinwazzjonijet foloz u malafamanti fil-konfront tieghu intizi biex joffendu l-unur u l-fama tieghu u li jesponuh ghar-redikolu tal-pubbliku, u ghalhekk talab lill-Qorti tiddikjara tali kummenti bhala malafamanti u libelluzi fil-konfront tieghu u tikkundanna lill-istess intimat ihallsu danni bl-applikazzjoni tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna illi taht ritratt taz-zewgt partijiet u Norman Vella, jghid is-segwenti:

> *Television personality John Bundy said yesterday it was Interior Ministry chief of staff Silvio Scerri who ordered the termination of Norman Vella's redeployment with PBS.*
>
> *Mr Bundy told this newspaper he happened to be at the ministry at the time when he heard Mr Scerri issue the order for Mr Vella to be returned to his job at the Immigration Department.*
>
> *Mr Bundy was contacted soon after Mr Vella testified before the Employment Commission that Mr Bundy told him he had seen and heard Mr Scerri order his transfer*

from PBS. Mr Vella said Mr Bundy gave him the information a few days after the last sitting and a request will be filed for Mr Bundy to be summoned as a witness in the case.
Contacted after the sitting, Mr Bundy confirmed what Mr Vella had said: "I met Norman Vella and told him not to continue blaming the Prime Minister or any other politicians because it was Silvio Scerri who took the decision and I heard him with my own ears because I happened to be there at the time."

Mr Scerri, on the other hand, made a categorical denial but would not comment further for the time being.

The commission is hearing the case that Mr Vella, the former presenter of TVHemm, instituted against Prime Minister Joseph Muscat and the Principal Permanent Secretary, Mario Cutajar, claiming political discrimination in the way he was re-deployed from PBS to the Immigration Department.

Mr Vella said this confirmed what he had been told internally at PBS, that Mr Scerri had been putting a lot of pressure for him to be removed from PBS.

Mr Vella said that a few weeks after he was sent back to the Immigration Office, PBS saw a large influx of people, especially journalists who previously worked for Labour's television station, One.

He mentioned, as a particular example, how TV presenter Norma Saliba was seconded from the Malta-EU Steering Action Committee with a €21,000 salary, €2,000 in allowances and a payment of €60 per TVAM programme she presented every morning.

He also mentioned journalists Brandon Pisani, Rodney Vassallo and Owen Galea, with the latter joining after having held the post of communications coordinator for Labour MP Franco Mercieca when he was Parliamentary Secretary for the elderly.

Mr Vella said that when he learnt that his redeployment to PBS was being withdrawn he spoke to PBS chief executive Anton Attard, board member Frank Portelli and chairman Tonio Portughese, who all confirmed that the decisions were being taken "from higher up".

During his testimony, Mr Vella also told the commission of how Dr Muscat had threatened him during a meeting in the presence of Peppi Azzopardi, the presenter of Xarabank, Malta's most watched talk show, and members of the Labour Party.

According to Mr Vella, Dr Muscat said: "For every attack we feel that is directed at the Labour Party, I will retaliate with twice as much force, with all my might, below the belt, where it hurts."

Rat ir-risposta ta' l-intimat ippresentat fl-4 ta' Lulju 2014 fejn, in succint, insista illi t-talba kellha tigi michuda peress illi huwa ma ghamel ebda diskors pubbliku izda kellu biss konversazzjoni privata illi eventwalment giet maghmulha pubblika minn terza persuna, ossija Norman Vella, illi ma kienx parti fil-kawza. Huwa sahaq ukoll illi kull ma ghamel kien illi rrakkonta, waqt konversazzjoni privata, dak li sema b'widnejh u ra quddiem ghajnejh lir-rikorrenti Silvio Scerri jghid waqt telefonata li saret quddiemu, fir-rigward ta' Norman Vella.

Semghet ix-xhieda tar-rikorrent **Silvio Scerri** moghtija fl-20 ta' Ottubru 2014, in ezami u kontro

ezami.

Semghet ix-xhieda ta' **Anton Attard**, Kap Ezekuttiv tal-Public Broadcasting Services, moghtija fid 9 ta' April 2015.

Semghet ix-xhieda ta' **Tonio Portughese**, Non Executive Chairman tal-Public Broadcasting Services, moghtija fl 1 ta' Gunju 2015.

Rat illi fil 15 ta' Gunju 2015 il-Qorti ddikjarat il-provi rikorrenti bhala maghluqa.

Semghet ix-xhieda ta' l-intimat **John Bundy** moghtija fil 15 ta' Ottubru 2015.

Semghet ix-xhieda ta' **Kevin Mahoney**, Segretarju Permanenti fi hdan il-Ministeru ta' l-Intern u Sigurta' Nazzjonali, prodott mill-intimat u moghtija fit 23 ta' Novembru 2015.

Semghet ix-xhieda ta' **Matthew Xuereb**, gurnalist tat-Times of Malta u awtur tal-artikolu illi deher fuq it-Times of Malta fil-5 ta' Gunju 2014 fejn gew irrappurtati l-kummenti ta' l-intimat, meritu tal-kawza odjerna, prodott mill-intimat u moghtija fl 1 ta' Frar 2016.

Semghet ix-xhieda ta' **Norman Vella** prodott mill-intimat u moghtija fl 1 ta' Frar 2016.

Rat illi fil 11 ta' April 2016 il-Qorti ddikjarat il-provi kollha bhala maghluqa u differit il-kawza ghas-sottomissjonijiet rikorrent.

Rat illi fit 30 ta' Mejju 2016, ir-rikorrent talab illi jaghmel is-sottomissjonjiet tieghu verbalment.

Rat illi fis 7 ta' Lulju 2016, l-intimat talab differiment sabiex ikun jista jaghmel is-sottomissjonijiet orali fis-seduta li jmiss.

Semghet it-trattazzjoni orali ta' l-abbli difensuri tal-partijiet illi saret fit 3 ta' Novembru 2016, wara liema data il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi fil-5 ta' Gunju 2014, ir-rikorrent kien ic-Chief of Staff tal-Ministru inkarigat mill-Ministeru ta' l-Intern u Sigurta' Nazzjonali, Dr Manwel Mallia u, fost il-varji entitajiet tal-Gvern li kienu jaqghu taht tali dikasteru, kien hemm il-Public Broadcasting Services Limited.

Jirrizulta illi fil-5 ta' Gunju 2014 giet rappurtata storja fuq it-Times of Malta illi kienet qieghda tirrapporta proceduri mehudha quddiem l-Employment Commission minn Norman Vella kontra l-Prim Ministru rizultat tal-fatt illi kien tnehha mill-PBS u kien gie re-deployed gewwa l-Immigration Department.

Jirrizulta illi, waqt tali proceduri, Norman Vella xehed u qal illi John Bundy kien gharrfu li Silvio Scerri kien ordna illi jitnehha minn fuq it-TVM, liema xhieda giet rappurtata fuq il-media lokali, inkluz it-Times of Malta Online fil-gurnata meta inghatat tali xhieda, ossija fl-4 ta' Gunju 2014.

Jirrizulta illi sussegwentement, l-intimat gie kkuntattjat mit-Times of Malta fejn gie mgharraf dwar dak illi kien ghadu kif qal Norma Vella u l-intimat gie kkwotat illi qal is-segwenti:

> *"I met Norman Vella and told him not to continue blaming the Prime Minister or any other politicians because it was Silvio Scerri who took the decision and I heard him with my own ears because I happened to be there at the time."*

Jirrizulta illi John Bundy, quddiemdina l-Qorti, ikkonferma illi tali frazi huwa kien attwalment qalha lill-gurnalist illi kien qieghed jirrappurta l-proceduri quddiem l-Employment Commission, ossija Matthew Xuereb.

Jirrizulta illi dakinhar illi deher dan il-kumment 'online', ir-rikorrent ikkommunika minnufih mal-gurnal Times of Malta sabiex jichad dak allegat u, sussegwentement, wara illi giet pubblikata l-istorja fuq il-gazzetta Times of Malta fil-5 ta' Gunju 2014, huwa pproceda biex fetah dawna l-proceduri kontra l-intimat John Bundu ftit jiem wara.

Ikkunsidrat

Jirrizulta, illi f'Marzu 2013, wara il-bidla tal-amministrazzjoni rizultat tal-Elezzjoni Generali ta' Marzu 2013, ir-rikorrent Silvio Scerri gie appuntat bhala Chief of Staff tal-Ministru Manwel Mallia.

Jirrizulta illi, ftit wara, Kevin Mahoney gie appuntat bhala Segretarju Permanenti fi hdan il-Ministeru immexxi minn Dr Manwel Mallia u li tieghu ir-rikorrent kien ic-Chief of Staff.

Jirrizulta illi fit-13 ta' Mejju 2013, Silvio Scerri baghat SMS lill John Bundy fejn talbu sabiex jigi l-ufficji tieghu, u wara skambju ta' messaggi, ftehmu illi John Bundy imur l-ufficju tieghu fl-14 ta' Mejju 2013.

Jirrizulta illi fl-14 ta' Mejju 2013, Silvio Scerri talab lill John Bundy sabiex jibda jippresenta programm televisiv flok Pierre Portelli u Dr Joseph Mifsud, liema offerta huwa ddeklina.

Jirrizulta illi dakinhar, waqt tali laqgha, Silvio Scerri cempel fuq it-telefon lill certu 'Anton' u talbu informazzjoni dwar il-pagi li kienu qed jipperceipxxu Pierre Portelli u Dr Joseph Mifsud, bil-ghan illi jhajjar lill John Bundy sabiex jaccetta l-offerta illi kien qieghed jaghmillu Scerri.

Jirrizulta wkoll illi, waqt tali telefonata, Silvio Scerri instema jghid lill dana 'Anton' sabiex jinforma lill Norman Vella "*biex imur lura fejn gie qabel kien il-PBS, u semma l-kelma 'immigration*" (fol 34).

Jirrizulta illi, waqt tali telefonata, Silvio Scerri deher qieghed jisma dwar xi affarjiet illi kienu qed jinghaddulu minn-naha l-ohra u spicca t-telefonata billi qallu lill dan 'Anton', "*tinkwieta xejn, toqghodx thabbel rasek xerjn, issa naghmluhielek bil-miktub.*"

Jirrizulta illi t-telefonata spiccat hemm u, hekk kif l-intimat John Bundy kien hiereg il-barra, dahal fl-ufficcju ta' Scerri il-Permanent Secretary Kevin Mahoney u, wara li introduca lill John Bundy ma' Kevin Mahoney, Scerri qal lill Mahoney "*irridek tikteb lil Anton Attard biex tinfurmah bir-redeployment tas-sur Norman Vella.*"

Jirrizulta illi fl-20 ta' Mejju 2013, Kevin Mahoney, bhala Segretarju Permanenti fi hdan il-Ministeru li tieghu r-rikorrent kien Chief of Staff, kiteb lill Anton Attard, illi kien ic-Chief Executive Officer tal-PBS Limited, fejn talab informazzjoni dwar meta jispicca l-programm fuq TVM Norman Vella , illi kien Immigration Officer 'seconded' lill-PBS. (fol 53)

Jirrizulta illi fil 21 ta' Mejju 2013, Anton Attard kiteb lill Kevin Mahoney fejn gharrfu illi l-programm imtella minn Norman Vella imsejjah TVHemm jispicca fit 28 ta' Gunju 2013. (fol 54)

Jirrizulta illi fis-27 ta' Mejju 2013, Kevin Mahoney kiteb lill Principal Permanent Secretary fejn gharrfu illi "*the Administration is requesting back the services of Mr Vella to his substantive grade of Senior Clerk at the Immigration Control Services*", liema talba giet gustifikata abbazi tal-fatt illi "*A restructuring of this section is being contemplated and additional duties are bound to be added on to these officers due to an EU proposal concerning Registered Travellers Programme and the Entry/Exit System, both part of the Smart Border proposal*". (fol 52)

Jirrizulta illi fl-10 ta' Gunju 2013, wara illi risposta kienet ghadha ma wasslietx, intbghatet '*a gentle reminder*' fejn l-ittra tas-27 ta' Mejju 2013 giet, ghal darba ohra, annessa. (fol 55)

Jirrizulta illi fis-26 ta' Gunju 2013 intbghatet email minn Martin Pisani fi hdan l-Ufficju tal-Prim Ministru lis-CEO tal-Public Broadcasting Services Limited kif ukoll lill varji persuni ohra, inkluz Norman Vella stess, fejn is-CEO gie mgharraf li b'effett mill 1 ta' Lulju 2013 "*Mr Vella is to report for duty at the Immigration Office*".

Jirrizulta illi fl-10 ta' Ottubru 2013, Norman Vella fetah proceduri kontra l-Prim Ministru u s-Segretarju Permanenti Ewlieni quddiem il-Kummissju dwar l-Impjiegi fejn talab illi jigi dikjarat illi r-re-deployment tieghu mill-PBS ghall Immigration Office kien "*jikkostiwixxi diskrikinazzjoni politika*" (fol 76 - 80)

Jirrizulta illi fit-13 ta' Novembru 2013, l-intimat John Bundy kien mar gewwa l-Ajruport sabiex jigbor il-mara tieghu li tahdem hemm, u hekk kif kien gewwa l-parkegg, iltaqa' ma Norman Vella, illi huwa ma kienx jaf personalment. Madanakollu, kif iltaqghu, t-tnejn sellmu lill xulxin u bdew jitkellmu fuq ix-xoghol w il-media u, hekk kif gie l-kliem fuq il-kaz ta' Norman Vella, John Bundy gharraf lill Vella illi kien zbaljat li mexxa kontra l-Prim Ministru, peress illi huwa kien jaf personalment illi kien Silvio Scerri li kien ordna r-redployment tieghu. Ghalkemm Norman Vella baqa' jinsisti ma' Bundy li kien il-Prim Ministru li ordna tali tkeccija, Bundy baqa jinsisti ma' Vella illi Silvio Scerri kien hareg l-ordni. Id-diskursata imbghat spiccat hemm.

Jirrizulta illi fil-15 ta' Mejju 2014, waqt illi Norman Vella kien qieghed jixhed quddiem l-Employment Commission, huwa xehed illi kien sema minghand terzi persuni (li ma kienux John Bundy) illi Silvio Scerri ma kienx riedu aktar gewwa l-PBS, liema xhieda giet irrappurtata fuq il-mezzi tax-xandir.

Jirrizulta illi fis-17 ta' Mejju 2014, Norman Vella ltaqa' ma' l-intimat wara funeral u Bundy, filwaqt illi ghamillu referenza ghar-rappurtagg illi kien deher fil-gazzetta u dwar is-suspetti illi huwa kellu, accertah illi kellu ragun bis-suspett illi kellu f'Silvio Scerri u dana peress illi, kif qallu Bundy "*jiena kont hemm, rajtu jcempel u smajtu jordna t-transfer tieghek.*"

Jirrizulta illi waqt tali diskursata, Vella staqsa lill Bundy jekk setax jikkwotah meta jixhed darba ohra, u Bundy ikkonfermalu illi ma kellu ebda diffikulta' biha.

Jirrizulta illi sussegwentement, fis-seduta tal-Employment Commission tal-4 ta' Gunju 2014, Norman Vella semma dak illi kien qallu John Bundy, liema xhieda eventwalment giet rappurtata fuq il-media lokali u wasslet ghall-kawza odjerna.

Ikkunsidrat

Jirrizulta, fix-xhieda ta' Silvio Scerri, illi huwa jinnega dawna l-allegazzjonijet kollha filwaqt illi jinsisti illi ma kienx jaf kif ittiehdet id-decizjoni biex Vella jitnehha mill-PBS u jintbghat l-

Immigration Office. Huwa sahaq illi kienet decizjoni mehudha direttament mill-Ufficju tal-Prim Ministru u ma kellu ebda involviment fiha hu. Huwa insista illi qatt ma ddiskuta dwar dana il-kaz ma’ Kevin Mahoney, illi kien il-Permanent Secretary tal-Ministeru li tieghu kien ic-Chief of Staff, u kien sar jaf dwar it-trasferiment ta’ Vella unikament mill-mezzi tax-xandir. Scerri jichad ukoll illi qatt kellem lill Anton Attard dwar it-tnehhija ta’ Norman Vella. Scerri jichad ukoll illi Bundy qatt mar l-ufficju tieghu wahdu, izda sahaq illi mar darba gewwa ufficju iehor flimkien ma’ terza persuna.

Jirrizulta, mill-banda l-ohra, illi Kevin Mahoney, illi kien il-persuna illi mexxa l-process kollu tar-redeployment ta’ Norman Vella sahaq illi, dwar Norman Vella, huwa kien iddiskuta l-kaz direttament ma’ Silvio Scerri bil-ghan illi jkun jaf x’kienet id-direzzjoni politika illi kellha tittiehed fuq jekk kellux jitnehha Norman Vella jew le, u kien wara tali diskursata illi nbdiet il-procedura. Kevin Mahoney jikkonferma wkoll illi s-segretarjat tal-Ministeru, illi kien immexxi minn Silvio Scerri, dak iz-zmien kien qieghed jircievi hafna ilmenti dwar Norman Vella u dwar il-fatt illi kien ghadu qieghed jithalla jtella programmi fuq it-TVM.

Jirrizulta wkoll, kif stqarr Kevin Mahoney, illi l-ilmenti li kien qed jircievi s-segretarjat kienu parti mir-raguni ghaliex eventwalment tnehha Norman Vella, peress illi kien hemm ukoll decizjoni amministrattiva sabiex jissahhah l-Immigration Office. Madanakollu, kif jistqarr l-istess Kevin Mahoney “*jiena, bhala persuna amminstrattiva mhux politika, ma nistax ma naghtix kaz l-aspett politiku ghax, wara kollox, niehu direzzjoni mill-kap politiku*”

Jirrizulta, finalment, illi Anton Attard ikkonferma illi Silvio Scerri kien regolarment jikkomunika mieghu dwar kwistjonijet relatati mal-PBS, ghalkemm ma kkonfermax illi kien hemm telefonata partikolari biss fuq it-tnehhija ta’ Norman Vella.

Ikkunsidrat

Il-Qorti ma tistax ma tosservax illi, fiz-zmien illi ttiehdet id-decizjni sabiex jitnehha Norman Vella mill-PBS u jintbghat lura l-Immigration Office, Silvio Scerri kien ic-Chief of Staff tal-Ministeru u ghalhekk, bhala Chief of Staff, kien mistenni illi jkun a korrent ta’ l-affarjiet kollha illi kienu qed jaffettwaw l-operat tal-Ministeru stess.

Il-Qorti ma tistax ma tosservax ukoll illi, bhala Chief of Staff, Silvio Scerri kien responsabbli sabiex jassikura illi d-direzzjoni politika rikjesta mill-Ministru tieghu tigi implimentata, u ghalhekk kien responsabbli ghall-implimentazzjoni tad-direzzjoni politika rikjesta mill-Gvern tal-gurnata.

Il-Qorti, ghalhekk, issibha kemmxejn inverosimili illi Silvio Scerri, bhala Chief of Staff, ma kienx jaf illi dwar il-fatt illi kienet ittiehdet decizjoni li jitnehha Norman Vella, illi kien presentatur televisiv li ma kienx igawdi wisq simpatiji ma’ l-elettorat illi elegga lill-Gvern tal-gurnata, u kien intbghat gewwa l-Immigration Office, minn fejn kien gie originalment redeployed ghal gewwa l-PBS f’Settembru 2012, u illi sar jaf dwar tali re-deployment biss mill-mezzi tax-xandir.

Il-Qorti issibha difficili tifhem kif seta qatt Chief of Staff ta’ Ministeru daqstant importanti ma jkunx a korrent ta’ korrispondenza illi kienet ghaddejja bejn il-Permanent Secretary u l-Ufficcju tal-Prim Ministru bil-ghan illi Norman Vella jitnehha mit-TVM, meta l-istess Ministeru u s-Segretarjat illi tieghu huwa kien responsabbli, kien qieghed regolarment jircievi hafna ilmenti dwar Norman Vella u dwar il-fatt illi kien thalla jtella programmi televisivi fuq it-TVM ghalkemm kien hemm bidla fi-Gvern.

Il-Qorti tifhem illi x-xoghol ta’ Chief of Staff huwa certament wiehed impenjattiv, kemm

politikament kif ukoll amministrattivament, u li l-Ministeru li tieghu kien Chief of Staff ir-rikorrent kien wiehed konsiderevoli, izda thoss illi, kieku kien vera illi r-rikorrent ma kienx a korrent ta' decizjonijiet li certament kellhom portata ferm aktar politika milli amministrattiva, kif stqarr anke il-Permanent Secretary, kieku r-rikorrent ma kienx qieghed jaqdi d-dmijirijet tieghu bi shih lejn il-Ministru li qabbdu bhala Chief of Staff tieghu, kif jenhtieg.
Il-Qorti tifhem illi d-decizjoni li jitnehha Norman Vella mit-TVM kienet kemm wahda amministrattiva kif ukoll wahda politika, u filwaqt illi d-decizjoni amministrattiva kienet tispetta lill-Permanent Secretary, dik politika kienet tispetta lic-Chief of Staff tal-Ministru illi jkun qieghed jattwa id-direzzjoni moghtija lilu mill-Ministru u mill-Gvern tal-gurnata, u ghalhekk hija inverosimili illi Silvio Scerri ma kellu ebda involviment, kif sahaq waqt ix-xhieda tieghu.

Il-Qorti ma tistax ma tosservax illi l-kronologija tal-fatti kif fuq deskritti u rizultanti minn dokumentazzjoni mghoddija lill-Qorti minn Kevin Mahoney kif ukoll mid-dati indikati mill-intimat, John Bundy, illi xehed qabel ma gew ippresentati d-dokumentazzjoni fuq imsemmija, u ghalhekk ma kellu ebda opportunita' illi jivverifika tali dati mad-dokumentazzjoni fil-pussess ta' dina l-Qorti illum l-gurnata, hija tali li tindika illi l-verzjoni tal-fatti kif deskritti minn John Bundy huma ferm aktar verosimili u verifikabbli mill-fatti kif deskritti minn Scerri.

Ghalhekk il-kumment illi kien ghamel Bundy lill Norman Vella, u li eventwalment reggha ikkonferma lill-mezzi tax-xandir fl-artikolu meritu tal-kawza odjerna, ma setax kienx wiehed malafamanti stante illi kien ibbazat fuq fatti illi huwa kien jaf dwarhom u li gew korroborati minn dokumentazzjoni.

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

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-intimat, u ghalhekk

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni ikunu a karigu tar-rikorrent.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur