Qorti tal-Appell

(Kompetenza Inferjuri)

Imhallef Anthony Ellul

Appell numru: 200/2006

Martin Degiorgio (appellat)

Vs

Daphne Caruana Galizia (appellanti)

10 ta' Marzu, 2017.

1. B'sentenza li nghatat fid-9 ta' Dicembru 2015, il-Qorti tal-Magistrati (Malta) cahdet l-eccezzjonijiet tal-konvenuta u ddikjarat li l-artikli "Black shirts and blacker hearts" u "Martin and friends make the news", pubblikati fil-gazzetta The Malta Independent on Sunday fl-edizzjoni tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006 huma malafamanti u libelluzi fil-konfront tal-attur peress li siltiet minnhom ghandhom l-iskop li jtellfu jew inaqqsu r-reputazzjoni tieghu u kkundannata thallas kumpens ta' €2,400, bl-imghax legali mid-data tas-sentenza.

2. Il-konvenuta appellat mis-sentenza. L-aggravji huma li:

   i. Is-sentenza hi bazata fuq konsiderazzjonijiet zbaljati u rrilevanti;
   ii. Is-sentenza hi kontradittorja peress li hadet in konsiderazzjoni l-allegata intenzjoni tal-konvenuta u mbaghad ghamlet riferenza ghal numru ta' sentenzi lokali li jghidu li l-Att dwar l-Istampa ma jirriferix ghal xi intenzjoni specifika jew motiv ulterjuri li jrid ikollu l-awtur tal-kitba.
   iii. L-ewwel qorti naqset milli tiehu in konsiderazzjoni numru ta' fatturi u elementi essenzjali.
   iv. L-iskop tal-konvenuta ma kienx li jimmalafama lill-attur izda li jinvestiga u jinforma lill-qarrej dwar kwistjonijiet fl-interess pubbliku u ta' importanza kbira fix-xena politika Maltija fiz-zmien rilevanti. L-artikli kienu biss rizultat tal-ezercizzju tal-liberta tal-espressjoni.

3. L-attur wiegeb fejn ta r-ragunijiet ghalfejn l-appell ghandu jigi michud u s-sentenza tal-ewwel qorti konfermata.

4. Il-kawza titratta zewg artikli li kienu ppubblikati fil-gazzetta Malta Independent fil-21 ta' Mejju, 2006 (*Black shirts and blacker hearts*) u 18 ta' Gunju 2006 (*Martin and friends make the news*) li kitbet il-konvenuta. L-attur immarka b'kulur roza dawk il-partijiet tal-artikli li kien qieghed joggezzjona ghalihom. Fl-ewwel artiklu l-partijiet li l-attur oggezzjona ghalihom huma:

"Nobody would suggest that Norman Lowell and his black-shirts – or for that matter Philip Beattie, Martin De Giorgio, and their Assocjazzjoni Nazzjonali Reppublikana – are about to seize power, forcing us to live under fascism. Our electoral system militates against small political movements, as Alternattiva Demokratika very well knows. Even if the system changes and the fascists succeed in obtaining seats in Parliament, they will never make it to government, or even to opposition. But that is an irrelevant argument, because fascists are not interested in demorcracy".

"The danger is that they are fanning a frenzy of fear and hatred in the present: fear and hatred of the "outsider" and, by extension, fear and hatred of other Maltese who point out that they are wrong headed and that their views imperil our democratic way of life and our upholding of human rights and individual liberties.

Of course, neither Lowell's Imperium Europa nor Beattie's and De Giorgio's ANR call themselves fascists. They say instead that they are "far right"……"

"On this basis, Imperium Europa and the ANR are fascist organisations".

"Beattie and De Giorgio will be dismayed at being compared with Lowell. They like to think of themselves as the acceptable face of fascism – or, in their words, the "far right" – while Lowell hoves on the crackpot fringe. They attempt to dissociate themselves from him without condemning his views or mentioning his name".

"Karmenu Mifsud Bonnici did not shoot Raymond Caruana dead or ransack the halls of justice and the seat of the archbishop, but he failed to control the violence of the mob. These are things we lived through – bombs, deaths, shootings, ransacking, threats, fear – so why are we now behaving as though it is out of the question for rabid followers of an extremist organisation to set fire to the property of those who criticise them ? We, more than others, should know that it is not just entirely possible, but that it is alsmost certainly the correct explanation of what has been happening".

Fit-tieni artiklu regghet ghamlet riferenza ghall-attur u kitbet:

(a) Li f'artiklu pubblikat *f'The International Herald Tribune*, l-attur kien rapportat li qal:

"Degiorgio said he would warn that the Africans risked turning Malta into the toilet of the Mediterranean. Islam took Malta by force, and now the Africans are invading us silently', he said".

(b) *"Arlette repaid the compliment by turning up to bolster the meagre numbers at the ANR 'rally of thousands', joined to Norman Lowell's/hip, of course. He repaid a compliment of his own, by telling the Xarabank cameras that whe he and Etoile call a really, it will be enormous".*

Ovvjament wiehed irid jaqra l-artikli fl-intjier taghhom sabiex ikun jista' jasal ghal gudizzju finali.

5. Fiz-zmien li nkitbu l-artikli, l-immigrazzjoni f'Malta kien suggett jahraq. Suggett ta' nteress pubbliku u kien hawn dibattitu shih dwaru. Kien zmien ukoll fejn sehhew atti ta' vjolenza bhal hruq ta' vetturi. L-attur kien jifforma parti mill-grupp Alleanza Nazzjonali Repubblikana (ANR) li f'Gunju 2006 kien ukoll organizza protesta pubblika kontra 'l hekk imsejha 'immigrazzjoni illegali'. Mill-mod kif xehed l-attur hu evidenti li l-messagg li pprova jaghti hu li fejn tidhol l-immigrazzjoni, hu moderat. Pero' mill-provi li hemm fl-atti jirrizulta li hu kontra l-prezenza ta' immigranti f'Malta. F'dan ir-rigward issir riferenza ghal dak rapportat:

i. F'artiklu *'Malta offers a way station to nowhere'* ta' Jennifer Carlile ghal msnbc.com pubblikat fl-20 ta' Gunju, 2007 (fol. 127-128) gie rapportat li l-attur qal li l-immigranti, *"are heading for Europe because it's like the American dream;* ***they're just taking advantage of us****"* u li refugjati genwini setghu jaghzlu li jmorru f'pajjizi Afrikani. Hemm rapportat ukoll li qal li jekk l-immigranti ma jistghux jintbaghtu lura, ***"we cannot allow them out of detention centres"***.

ii. Fit-tieni artiklu tal-konvenuta pubblikat fit-18 ta' Gunju, 2006 ikkwotat x'qal l-attur lil Washington Post. Kopja ta' dan l-artiklu jinsab a fol. 52 tal-process (*An Island Engulfed by Migrants*, Mary Jordan pubblikat fl-4 ta' Gunju, 2006), gie rraportat li l-attur qal: *"****'We don't want a multicultural society'****, said Martin Dergiorgio, a leader of the Republican National Alliance, an anti-immigrant group formed last year. "Haven't you seen the problems it has brought to France and Britain ?".*

Kompla, ***"We have never had minorities, and we don't want minorities"*** u, *"**Until just three or four years ago, it was almost impossible to find a black African walking in Maltese streets, but nowadays you just have to walk in our capital city and there are many of them**"*.

iii. Artiklu iehor hu dak pubblikat f'*The International Herald Tribune* li l-konvenuta ghamlet riferenza ghalih fl-artiklu tat-18 ta' Gunju, 2006, u li ser issir riferenza iktar 'il quddiem f'din is-sentenza. F'dak l-artiklu gie rapportat li l-attur qal, *"We are a close-knit society and **the migrants are destroying our culture**"*.

L-attur illimita ruhu biex jikkontesta parti mill-artiklu pubblikat *f'The International Herald Tribune*. Ma kkontestax il-kontenut tal-artikli l-ohra. Fil-fehma tal-qorti l-messagg kien car: **f'Malta m'hawnx post ghall-immigranti li jiġu mill-Afrika u min jidhol f'Malta m'ghandux jinghata kenn**.

6. Fis-sentenza **Vajnai v Hungary** (33629/06) tat-8 ta' Lulju 2008, il-Qorti Ewropea tad-Drittijiet tal-Bniedem qalet:

> *"The Court further reiterates that freedom of expression, as secured in Article 10 § 1 of the Convention, 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 Article 10 § 2, 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 which offend, shock or disturb; such are the demands of pluralism, tolerance and broad-mindedness, without which there is no "democratic society"** (see, among many other authorities, Oberschlick v. Austria (no. 1), 23 May 1991, § 57, Series A no. 204, and Nilsen and Johnsen v. Norway [GC], no. 23118/93, § 43, ECHR 1999-VIII). Although freedom of expression may be subject to exceptions, they "must be narrowly interpreted" and "the necessity for any restrictions must be convincingly established" (see, for instance, Observer and Guardian v. the United Kingdom, 26 November 1991, § 59, Series A no. 216)"*.

7. Wiehed irid jaghmel distinzjoni bejn fatti u *fair comment*. Fis-sentenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem insibu r-riferenza ghal *value judgment*, li hi l-opinjoni. Wiehed irid jiftakar li waqt *statement of fact* jista' jigi ppruvat, mhux l-istess fil-kaz ta' *value judgment*.

8. Fil-fehma tal-qorti kellu jkun car ghall-qarrej li bl-ewwel artikolu l-konvenuta kient qeghda tesprimi l-opinjoni taghha bazata fuq il-posizzjoni li hadu l-persuni li ssemmew fl-artiklu dwar is-suggett tal-immigrazzjoni f'Malta. Il-qorti ma taqbilx mal-ewwel qorti li l-uzu tal-kelma faxxist kienet *"wahda purament ta' insult u xejn iktar"*. M'hemmx dubju li fiz-zmien tal-pubblikazzjoni tal-artikli, l-attur kien ihaddan l-idejal ta' nazzjonalizmu u patrijotizmu, u kien ghal kollox kontra l-immigrazzjoni. Ghalih l-immigranti ma kellhomx post fis-socjeta Maltija. Tant hu hekk li kien wiehed mill-organizzaturi tal-protesta pubblika li l-Alleanza Nazzjonali Repubblikana organizzat fil-5 ta' Gunju 2006, u li ghaliha ppartecipaw ghaqdiet bhal *Imperium Europa*. Protesta li kienet kontra l-immigrazzjoni u li kienet diga' programmata meta nkiteb l-ewwel artiklu tant li ssemmiet (ara tieni kolonna). It-twemmin tal-attur fir-rigward tal-immigrazzjoni hi cara mill-estratti tal-artikli fuq imsemmija. Ghalkemm l-uzu tal-kelma faxxisti tista' titqies li hi harxa, pero' kienet biss kritika ghall-posizzjoni li ha l-attur flimkien ma' ohrajn li kienu parti mill-Alleanza Nazzjonali Repubblikana, ghal dak li jirrigwarda s-suggett tal-immigrazzjoni. Fis-sentenza **Karman v Russia** (29372/02) tal-14 ta' Dicembru, 2006, il-Qorti Ewropea osservat:

"39. The Court further recalls that use of the term "Nazi" – or, as in the present case, a derivative term "neo-fascist" – does not automatically justify a conviction for defamation on the ground of the special stigma attached to it (see Scharsach and News Verlagsgesellschaft v. Austria, no. 39394/98, § 43, ECHR 2003-XI)".

Il-konvenuta ma wzatx il-kelma faxxisti u waqfet hemm, izda fit-tieni parti tal-artiklu qalet xi tfisser. Fir-realta' tat l-interpretazzjoni taghha ghal din il-kelma. Hekk per ezempju, kitbet: *"Fascism is suspicious of all 'foreigners', and minority groups, and regards human rights as dispensable if they do not serve the interests of the nation, or if they are a hindrance to achieving the objectives of the fascist movement"*. Minn din il-parti tal-artiklu l-qarrej jista' jifhem kif il-konvenuta waslet biex taghmel biss *value judgment* dwar l-attur, dejjem fuq is-suggett tal-immigrazzjoni u kif dak li kien qieghed ighid flimkien ma' persuni ohra kien qieghed jaghti lok ghall-ambjent ta' intollerenza kontra l-immigranti.

L-istess qorti fis-sentenza **De Haas and Gijsels v Belgium** (19983/92) tal-24 ta' Frar 1997 qalet, *"(.....) Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed".* Hekk ukoll fis-sentenza **Kulis v. Poland**, il-Qorti Ewropea osservat:

"In the context of a public debate the role of the press as a public watchdog allows journalists to have recourse to a certain degree of exaggeration, provocation or harshness".

Imbaghad wiehed irid jiftakar li rrispettivament jekk l-attur kienx jikkunsidra lilu nnifsu bhala politiku jew membru fi *pressure group*, jibqa' l-fatt li bil-posizzjoni pubblika li ha espona lilu nnifsu ghall-iskrutinju tal-media. Gialadarba s-suggett ta' immigrazzjoni kien ta' nteress pubbliku, opinjonista bhall-konvenuta kellha tinghata latitudni wiesa' biex tesprimi l-opinjoni taghha dwar il-posizzjoni li ha l-attur fuq l-immigrazzjoni u liema posizzjoni tirrizulta wkoll mid-dokumenti fuq imsemmija. Ovvjament il-qarrej seta' jaqbel jew ma jaqbilx ma' dik l-opinjoni tal-konvenuta.

9. Fir-rigward tar-riferenza li l-konvenuta ghamlet ghall-incidenti serji fl-istorja tal-politika lokali (ara t-tielet kolonna tal-ewwel artiklu), ma qalitx li l-attur kien vjolenti izda li hu u siehbu kellhom jifhmu li bi kliemhom u l-idejat li kienu qeghdin jipproponu, kienu qeghdin jikkontribwixxu ghall-kultura ta' vjolenza. Opinjoni ohra tal-konvenuta, fi zmien li twettqu atti ta' vjolenza u intimidazzjoni li kienu relatati mas-suggett tal-immigrazzjoni.

10. L-attur hadha wkoll bhala offiza li l-konvenuta pparagunatu ma' Norman Lowell. Fil-fehma tal-qorti l-konvenuta poggiet iz-zewg ghaqdiet fl-istess keffa in kwantu fil-fehma taghha kienu jattiraw l-istess tip ta' *supporters* ghaliex ma kinux kapaci jaghmlu d-distinzjoni li kienet qeghda ssir mill-attur. Din hi biss opinjoni tal-konvenuta. Fir-realta fl-artiklu l-attrici ghamlet ukoll distinzjoni bejn *Imperium Europa* u l-ghaqda li l-attur kien parti minnha (ara l-ahhar parti tal-ewwel kolonna tal-artiklu).

11. Ghal dak li jirrigwarda t-tieni artiklu pubblikat fit-18 ta' Gunju, 2016 bit-titlu *"Martin and friends make the news"*, hu evidenti li l-konvenuta semplicement ikkowtat *verbatim* dak li nghad f'artiklu pubblikat *f'The International Herald Tribune* fis-6 ta' Gunju 2006. Il-konvenuta ghamlitha cara li kienet qeghda ticcita minn artiklu pubblikat f'gazzetta ohra. Il-konvenuta pprezentat kopja ta' dan l-artiklu (fol. 129-130), pero dan mhuwiex shih. Fil-fatt permezz ta' nota (fol. 43) ipprezentatt estratt mill-istess artiklu (fol. 51). Ma jirrizultax li l-attur ikkontesta li dak hu estratt mill-artiklu tas-6 ta' Gunju 2006. Li fl-artiklu ssemma l-attur jirrizulta wkoll mill-artiklu fol. 135-136 pubblikat fit-8 ta' Gunju 2006 fuq MaltaMedia.com, bit-titlu *"Illegal immigrant assaults police constable"*[1], fejn hemm riferenza ghal dak li qal l-attur lil *The International Herald Tribune*.

Il-konvenuta kitbet:

"***This is how he was reported in the IHT:*** "We are a close-knit society and the migrants are destroying our culture,' Degiorgio said from his car, with DVX – the Latin letters for 'Duce', the title of the Italian fascist dictator, Benito Mussolini – written on his licence-plate. Degiorgio said he would warn that the Africans *risked turning Malta into the toilet of the Mediterranean. 'Islam took Malta by force, and now the Africans are invading us silently', he said"* (enfazi tal-qorti).

Ezatt wara kkummentat:

"Mr Degiorgio may sell a lot of trips to other countries, but I don't think he's doing much to sell trips to Malta".

Kumment li kellha kull dritt taghmel, iktar u iktar meta tqies li fl-artiklu ta' *The International Herald Tribune* ntqal li l-attur hu agent tal-ivvjaggar. Ghall-qarrej ordinarju kellu jkun evidenti li r-riferenza ghal dak li qal Martin Degiorgio lill-gazzetti barranin, kien biex turi x'reklam hazin kien qieghed isir lil Malta b'dawk it-tip ta' dikjarazzjonijiet. Fil-fatt ghamlet ukoll riferenza ghall-artiklu l-iehor pubblikat fil-*Washington Post*, fejn kien rapportat x'kien qal Martin Degiorgio.

[1] *"Martin Degiorgio, who recently founded the Republican National Alliance, an anti-migrant pressure group, was also mentioned. "He is lobbying the government to repatriate the migrants, arguing that the "boat people" are threatening the country's social fabric, taking Maltese jobs, and draining government funds" the article said while adding that Degiorgio said he would warn that the Africans risked turning Malta into the toilet of the Mediterranean".*

Fir-rigward tat-tieni oggezzjoni tal-attur ghal parti fejn issemmiet persuna bl-isem ta' Arlette Baldacchino, il-qorti hi tal-fehma li ma ntqal xejn li jista' jitqies bhala malafamanti fil-konfront tal-attur. Hu veru li l-attur qal li l-assocjazzjoni li kien parti minnha ma kellha x'taqsam xejn ma' *Imperium Europa*, pero' z-zewg gruppi kienu jopponu l-prezenza ta' immigranti f'Malta.

Ghal dawn il-motivi tilqa' l-appell u thassar is-sentenza tal-ewwel qorti tad-9 ta' Dicembru 2015 u minflok tichad it-talba tal-attur. Spejjez taz-zewg istanzi a karigu tal-attur.

Anthony Ellul.