



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn tnax (12) ta' Gunju 2017

Rikors Numru 393/13 FDP

Onorevoli Ministru Evarist Bartolo  
(ID 764952M)

vs

Alexander Attard (ID 456067M) bhala editur tal-gurnal 'In-Nazzjon'

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-20 ta' Dicembru 2013 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu illi deher fil-harga ta' **In Nazzjon** tat-Tlieta 29 ta' Ottubru 2013 intitolat '**Il-Ministru Bartolo politicalment responsabbli ghat-tghaffiga tal-istipendji**', sahaq illi dak hemm miktub kien libelluz u malafamanti fil-konfront tieghu u kienet intiza li ttellef jew tnaqqas ir-reputazzjoni tieghu, w ghalhekk huwa talab lill-Qorti tiddikjara tali pubblikazzjoni bhala libelluza w malafamanti filwaqt illi tikkundanna lill-intimat ihallas danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kaz odjern illi, taht is-sotto titolu "Jirrienza c-Chairman tal-Bord tal-Istipendji biex il-Ministru jinheles minn kull responsabbilta'", jghid is-segwent:

*Ir-rapport li gie ppublikat il-bierah dwar l-istorja tal-istipendji ghal studenti li jsegwu kors ta' revizjoni fil-livel ordinarju f'istitutzzjonijet post-sekondarji, tfisser mill-Partit Nazzjonalista bhala konferma dak li kien ilu maghruf, jigifieri li c-Chairman tal-Bord tal-Istipendji, Tonio Briguglio, intghazel bhala l-haruf tas-sagrificcju u kull jirrienza biex il-Ministru tal-Edukazzjoni Evarist Bartolo jinheles minn kull responsabbilta'.*

*Il-Parti Nazzjonalista qal dan fi stqarrija li fiha fakkar li d-decizjoni li ttiehdet giet reveduta biss wara investigazzjoni li saret mill-kamra tal-ahbarjiet tal-Partit Nazzjonalista.*

*L-istqarrija tghid li minflok saret inkjesta indipendenti dwar dan il-kaz, ir-rapport li wassal ghar-rizenja ta' Chairman tal-Bord tal-Istipendji sar minn Bord kompost minn individwi appuntati politikament mill-Ministru Evarist Bartolo.*

*Dawn jinkludu zewgt konsulenti appuntati politikament mill-Ministru Evarist Bartolo stess u missier id-Deputat Laburista, Chris Fearne.*

*Il-Partit Nazzjonalista zied li minhabba l-kredenzjali dubjuzi tal-Bord ta' Investigazzjoni li kiteb dan ir-rapport, ir-rapport inniffsu jaghmel kummenti politici li ma humiex posthom f'rapport li suppost hu tekniku u imparzjali u hu car li r-rapport sar b'agenda politika partikolari.*

*Il-Partit Nazzjonalista qal li r-rapport tal-Bord ta' Investigazzjoni jaghmel referenza wkoll ghall-programm elettorali tal-Partit Laburista u b'hekk jikxef in-nuqqas ta' serjeta u l-agenda politika ta' dan il-Bord.*

*Fl-istess waqt, il-Partit Nazzjonalista jilqa l-proposta li jigi ccarat it-test tal-Ligi Sussidjarja sabiex jirrifletti l-bidliet li sari fl-2012 biex b'hekk pajjizna jkollu ligi li ma thalli l-ebda lok ghal interpretazzjoni.*

*Il-PN qal li dan ghandu jsir fuq rakkomandazzjonijiet tal-Kummissjoni Nazzjonali ghall-Edukazzjoni Avanzata u Oghla.*

*Il-Partit Nazzjonalista innota wkoll li c-Chairman tal-Bord tal-Istipendji gie appuntat politikament mill-Ministru Bartolo u dan ghalhekk ifisser li l-Ministru hu politikament responsabbli ghad-decizjonijiet li ttiehdu mill-persuni li hatar hu stess.*

*B'dan ir-rapport, sahaq il-Partit Nazzjonalista, il-Ministru Evarist Bartolo nghaqad ma' sensiela ta' ministri li nhibew wara rapporti biex jghattu xturhom minn zbalji li saru taht imnehirhom, liema zbalji huwa politikament responsabbli ghalihom.*

*Il-Bord li hejja dan ir-rapport kien immexxi minn Paul Bonello bhala Chairman tal-Bord li nhatar minn Gvern Laburista bhala Chairman tal-Malita Investments plc wara li kien indirizza mass meeting tal-Partit Laburista li sar f'Haz-Zabbar waqt il-kampanja elettorali.*

*Il-Bord kien jinkludi wkoll lil Charmaine Cristiano Grech, eks-vici Sindku Laburista taz-Zurrieq u Frederick Fearne li hu missier id-Deputat Laburista Chris Fearne.*

*In-Nazzjoni fit 2 ta' Ottubru 2013 zvelat din l-istorja li qabdet lill-Gvern f'paniku, bil-Prim Ministru Joseph Muscat jibghat ghall-Ministru Evarist Bartolo ghal laqgha urgenti fil-Berga ta' Kastilja u fi stqarrija jghid li c-cirkulari harget minn wara dahar il-Ministeru u li ordna investigazzjoni.*

Rat id-difiza mqajjma mill-intimat u ppresentata fit 22 ta' Jannar 2014 fejn, filwaqt illi sahaq illi l-artikolu lamentat ma kienx miktub bl-iskop li jtellef jew inaqqas ir-reputazzjon iteghi, insista illi l-artikolu kien jikkonsisti f'fatti verifikabbli u kummenti dwar kwistjonijiet fl-interess pubbliku li ghalhekk jikkonsistu f'fair comment u kritika accettabbli f'socjeta demokratika.

Rat l-affidavit tar-rikorrent **Evarist Bartolo** ippresentat fis-17 ta' Marzu 2014 flimkien mad-dokumentazzjoni hemm annessa.

Semghet ix-xhieda ta' **Tonio Briguglio**, li kien ic-Chairman tal-Bord ta' l-Istipendji bejn l-1 ta' Lulju 2013 u Ottubru 2013, meta huwa rrienza wara li kienet inqalghet kontroversja dwar decizjoni ta' twaqqif ta' l-istipendji ta' xi studenti, liema xhieda inghatat fit-23 ta' Gunju 2014 u fit-13 ta' Ottubru 2014, flimkien ma' dokumentazzjoni minnu esebita fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' **Paul Bonello**, illi kien kien ic-Chairman tal-*'Bord ta' Investigazzjoni dwar Stipendji ghal Studenti li jsegwu kors ta' revizjoni fil-livell Ordinarju fi Skejjel post-Sekondarji'*, liema Bord gie mahtur mir-rikorrent wara illi nqalghet il-kontroversja fuq imsemmija, liema xhieda inghatat fl-20 ta' Novembru 2014 fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' **Dr Romina Cuschieri**, Chairperson ta' l-Istudent's Maintenance Grants Bord, liema kariga hija inghatat wara ir-rienza ta' Tonio Briguglio, li xehdet fil-5 ta' Frar 2015 fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna.

Rat id-dokument ippresentat mill-intimat fit-30 ta' April 2015, wara liema dokument l-istess rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Mario Schiavone**, prodott mill-intimat, li kien ic-Chairperson ta' l-Istudent's Maintenance Grants Board qabel ma' lahaq Tonio Briguglio, liema xhieda inghatat fit-23 ta' Novembru 2015 fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' **Diane Debono**, illi kienet Segretarja ta' l-Istudent's Maintenance Grants Board ghal madwar tnax il-sena sas-sena 2014 u kienet acting Chairperson ta' l-istess Bord sakemm gie nominat Tonio Briguglio, liema xhieda inghatat fit-18 ta' April 2016, fit-2 ta' Gunju 2016 u fl-14 ta' Lulju 2016 flimkien ma' dokumentazzjoni ossija korrispondenza skambjata fiz-zmien meta nqalghet il-kontroversja fuq imsemmija fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna.

Rat illi fl-14 ta' Lulju 2016 il-partijiet ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Rat illi, ghal kull buon fini, fil 5 ta' Frar 2015 kien gie dikjarat illi l-provi kollha migbura fil-kawza 390/13 FDP fl-ismijiet 'Evarist Bartolo vs Alexander Attard' li kienet miexja flimkien mal-kawza odjerna kellhom jitqiesu bhala provi fil-kawza odjerna.

Rat in-nota ta' sottomissjonijiet tar-rikorrent ippresentata fl-20 ta' Frar 2017.

Rat in-nota ta' sottomissjonijiet ta' l-intimat ippresentata fl-24 ta' Marzu 2017.

Rat illi fis 27 ta' Marzu 2017 il-kawza thalliet ghas-sentenza.

## **Ikkunsidrat**

Jirrizulta illi, fi zmien il-pubblikazzjoni meritu tal-kawza odjerna, ir-rikorrent kien il-Ministru ta' l-Edukazzjoni, kariga illi huwa kien inghata f'Marzu 2013 u li zamm sa' l-elezzjoni ta' Gunju 2017.

Jirrizulta illi, fl-1 ta' Lulju 2013, a tenur ta' l-Artikolu 18 (1) tal-Regolamenti dwar Ghotjiet ta' Manteniment ghal Studenti, 2005 vigenti dak iz-zmien, ir-rikorrent, bhala Ministru tal-Edukazzjoni,

kien appunta lill Tonio Briguglio bhala Chairperson tal-Bord għall-Għotjiet ta' Manteniment (fol 59).

Jirrizulta illi, a tenur tal-Artikolu 20 ta' dawk ir-regolamenti, illi illum gew rimpjazzati bl-Avviz Legali 308 tas-sena 2016 li dahhlu in vigore il-Legislazzjoni Sussidjarja 327.178, il-mansjonijiet ta' dana il-Bord huma illi:

*(a) jimmanigġa u jimmonitorja l-allokkazzjoni effettiva u l-ħlas tal-għotjiet ta' manteniment għall-istudenti;*

*(b) jiformula u regolarment jirrevedi proċeduri rigward l-assessjar, l-allokkazzjoni, il-ħlas u l-jedd għall-kisba ta' għotjiet ta' manteniment;*

*(c) jistabbilixxi kriterji u jassessja, jiddeċiedi u jirrevedi applikazzjonijiet għal għotjiet ta' manteniment supplimentari;*

*(d) jistabbilixxi kriterji u jassessja, jiddeċiedi u jirrevedi applikazzjonijiet taħt kull skema oħra hekk kif ikun assenjat mill-Ministru minn żmien għal żmien;*

*(e) jikkonsidra rapporti mgħoddija lil minn awtoritajiet edukattivi kompetenti li jirrigwardaw il-progress akkademiku tal-istudenti u japplika sanzjonijiet meta ir-rekwiżiti minimi ma jintlaħqux;*

*(f) jissorvelja l-immanġġjar u l-ħlasijiet tal-għotjiet tal-manteniment għall-istudenti u jieħu kull azzjoni neċessarja biex jiġbor lura kull għotja li ngħatat aktar milli kemm suppost;*

*(g) jippjana u jimplimenta b'mod effettiv meta paragonat mal-ispiza involuta kull skema ta' esperjenza ta' xogħol tal-istudenti li l-Ministru jista', minn żmien għal żmien, jiddeċiedi li jipprovdi;*

*(h) jirrakkomanda bidiliet għal l-politika nazzjonali dwar l-ghajnuna finanzjarja għal edukazzjoni avvanzata u oġġla.*

Jirrizulta illi, fit-30 ta' Settembru 2013 (13.12pm), Tonio Briguglio kiteb lir-rikorrent, bhala Ministru u gharrfu b'dan li gej: (fol 125)

*Minister*

*During a meeting held with MCAST and the Maintenance Grants Section this morning, I was informed of certain concessions and decisions, which were taken by the Chairperson, and about which the current Board was not informed. It appears that such decisions/concessions were not only taken by the previous Chairperson, without consultation with the Board, but in certain cases they were taken ultra vires.*

*One particular case was that relating to students who either resign/abandon courses and pursue others courses at the same level with the same academic institution or different institution. Clause 12 of the Legal Notice 72/2005 clearly states that Students pursuing a second or subsequent course after having completed or partially followed another course at the same level shall not be entitled to receive a maintenance grant for*

*that period of time that is equivalent to the period spent in the previous course if for that previous course they were in receipt of a maintenance grant. Such students shall only be entitled to a maintenance grant for the remaining period of time after termination of the first period without a maintenance grant*

*The previous Chairman had informed MCAST and the Maintenance Grant Section that such students should be granted a stipend and smart card top up in full even if they pursue another course at the same level, but this concession was to be granted for a one time only. The present Board is of the opinion that such concession goes against the provision of the Legal Notice. However, the students attending MCAST courses had already been informed of this concession and MCAST has been applying it.*

*If the Clause 12 is to be applied, and therefore the concession retracted, it will definitely effect a considerable number of students attending MCAST. MCAST has informed the Board that if the concession is not applied, it would effect hundreds of students. Besides, there is also the political aspect of the decision since it would definitely attract criticism on government.*

*MCAST is requesting that such particular concession remains applicable in these circumstances.*

*You may wish to consider the above recommendation from MCAST.*

Jirrizulta illi l-ghada, 1 ta' Ottubru 2013 (07.20am), l-intimat irrisponda billi ta s-segventi struzzjonijiet:

*find it and quantify how many students fall in this category and what the financial implications are and then we will discuss*

*but please get the statistics '*

*We need it*

*thanks*

Jirrizulta illi, dakinhar stess, fil 08.40 am, (fol 124) Tonio Briguglio kiteb lill persuna responsabbli tal-MCAST, Chris Agius kif ukoll lill Diane D'Alessandro, illi kienet is-Segretarja tal-Bord u kienet ilha hemm ghal hafna snin qabel, u gharrafhom dan li gej:

*Further to yesterday's meeting with MCAST, as agreed I have referred the matter re students pursuing a second course at the same level, the Minister would like to have the actual number of students who change course and are granted a stipend for a one time only.*

Jirrizulta illi ftit minuti wara, fil 8.57, Diane D'Alessandro kitbet lill Tonio Briguglio u staqsietu s-segventi:

*Mr Briguglio,*

*With regards to the student who are following a revision course at Higher Secondary, are these going to receive a stipend please?*

Jirrizulta illi, ghal dina r-rikjesta, Tonio Briguglio fl-10.05am irrisponda lill Diane D'Alessandro billi qalilha s-segwent:

*Diane,*

*Please note that the Legal Notice 372/2005 has been amended in the year 2012 and by these amendments, no stipend is to be paid to SEC/O Level Revision Course.*

*The Board will abide by such an amendment.*

Jirrizulta illi sussegwentement, dakinhar stess, fil 14.59 pm, Diane D'Alessandro kitbet lill Tonio Briguglio fejn, filwaqt illi ghaddiet kopja tad-decizjoni tal-Bord precedentement kompost datat 23 ta' Lulju 2007 (fol 121), gharrfitu b'dan li gej:

*I have just confirmed with Mr Schiavone that, as per attached, it was decided that the concession was not given ONLY to Mcast students.*

Jirrizulta illi sussegwentement, fit 15.10pm, (fol 120) Tonio Briguglio irrisponda ghall email ta' Diane D'Alessandro billi qalilha s-segwent:

*... Mr Mario Schiavone had no power to give instruction or issue directives, make concessions which are indirect contrast to the provisions of the legal notice. Clause 12 clearly stipulates the contrary what Mr Schiavone had advised. Until the Board clarifies the matter, the Board will abide with the provisions of the Legal Notice.*

Jirrizulta illi, ghal dan, fis-17.29pm, Diane D'Alessandro irrispondiet billi qalet: (fol 120)

*I would like to point out that we only followed the instruction by the Chairman at the time. Since you are the new Chairman of the Board, we will definitely abide with your instructions.*

Jirrizulta illi sussegwentement, dina d-decizjoni giet kkomunikata lill Awtoritajiet tal-Higher Secondary.

Jirrizulta illi l-ghada, 2 ta' Ottubru 2013, id-Dipartiment tal-Infommazzjoni hareg **Press Release** Nru PR 2135 fejn gharraf is-segwent:

*Ic-cirkolari li nharget dwar stipendji, datata l-1 ta' Ottubru 2013, saret minn wara dahar il-Ministeru tal-Edukazzjoni u x-Xoghol u minghajr ebda approvazzjoni politika. Dina giet irtirata immedjatament hekk kif giet ghall-attenzjoni tal-Ministeru ghall-Edukazzjoni u x-Xoghol.*

*Il-Ministeru qatt ma awtorizza, jew intalab jawtorizza, tnaqqis jew tnehhija ta' xi forom ta' stipendji fil-Higher Secondary tan-Naxxar jew fis-Sixth Form ta' Ghawdex. L-istess jghodd ukoll ghal dawg l-istudenti li qed isegwu xi kors fl-MCAST, Junior College, Higher Secondary jew Sixth Form ta' Ghawdex. Dan jghodd ghal kull istituzzjoni edukattiva fejn l-istudenti jircievu stipendju.*

*Il-Ministeru ghall-Edukazzjoni u x-Xoghol qieghed jinvestiga x'wassal biex tinhareg din ic-cirkolari li ma kellha ebda forma ta' approvazzjoni Ministerjali.*

*Il-politika tal-Gvern dwar l-istipendji hi li dawn jissahhu, kif fil-fatt dab il-Gvern inghata l-mandat li jaghmel.*

Jirrizulta illi, sussegwentement, fl-4 ta' Ottubru 2013, ir-rikorrent appunta Bord ad hoc sabiex jinvestiga tali kaz, liema Bord, li kien immexxi minn Paul Bonello bhala Chairperson, ippresenta r-rapport finali tieghu fis 17 ta' Ottubru 2013.

Jirrizulta illi f'tali rapport (fol 18-27), il-Bord ha nota tal-fatti kollha tal-kaz u tad-dokumentazzjoni relattiva, u fil-**"Konkluzjonijiet ta' Fatti"** (fol 23), jghid is-segwenti:

- i. Huwa evidenti mid-dokumenti kollha li gabar u kkonsidra l-Bord, kif ukoll mill-Minuti tal-Bord tal-Istipendji, li ma kienx il-Bord tal-Istipendji li ddecieda li jwaqqaf l-istipendju lill studenti li kienu qed jaghmlu l-kors ta' revizjoni tal-O levels fl-iskejjel sekondarji. Id-decizjoni hadha ic-Chairman tal-Bord wahdu u minkejja l-attentati u l-pariri tas-Sinjura D'Alessandro, Kap tat-Taqsima tal-Istipendji u tac-Chairman ta' qabel, is-Sur Schiavone. Il-Bord tal-Istipendji qatt ma kkonsidra jew iddiskuta dan it-tip ta' stipendju. Din il-konkluzjoni issib il-konferma mis-Sur Briguglio stess.*
- ii. Huwa evidenti u minghajr dubju mill-evidenza li ngabret li l-Ministru qatt ma gie ikkonsultat dwar it-tnehhija tal-istipendju suggett ta' dan il-Bord ta' Investigazzjoni. Dan gie konfermat mis-Sur Briguglio innifsu*

*Anzi, f'cirkostanzi analogi li gew riferuti lill-Ministru ghall-interpretazzjoni anqas favorevoli ta' stipendji ohra eziztenti, u dana fil-granet u l-gimghat ta' qabel ma' qam dan l-incident, id-direzzjoni tal-Ministru kienet cara li l-ebda tnaqqis fl-applikazzjoni tal-istipendji eziztenti ma tigi approvata.*

Jirrizulta, ghalhekk, kemm mid-dokumentazzjoni esebita quddiem dina l-Qorti waqt il-provi migbura, kif ukoll skond il-konkluzjoni tar-rapport hawn fuq citat, illi r-rikorrent, bhala Ministru tal-Edukazzjoni, qatt ma gie involut f'ebda decizjoni illi b'xi mod wasslet ghat-tnehhija ta' stipendju lill studenti ghal certa zmien, liema decizjoni giet irtirata minnufih.

## **Ikkunsidrat**

Jirrizulta illi fl-artikolu illi tieghu qieghed jilmonta ir-rikorrent, jidher illi, ghalkemm l-Qorti ma nghatat ebda kopja ta' xi Stqarrija, gie riprodott mill-intimat l-Stqarrija illi hareg il-Partit Nazzjonalista wara illi gie ppubblikat ir-rapport redatt mill-Bord ta' Investigazzjoni dwar Stipendji ghal Studenti li jseguw kors ta' revizjoni fil-livell Ordinarju fi Skejjel post-Sekondarji', Bord mahtur mir-rikorrent wara illi nqalghet il-kontroversja fuq imsemmija, liema Bord ippresenta r-rapport tieghu fis 17 ta' Ottubru 2017.

Jirrizulta illi, kemm mit-titolu tal-artikolu innifsu, kif ukoll fl-artikolu per se, jirrizulta illi l-intimat kif ukoll l-istqarrija tal-Partit Nazzjonalista, jaghmlu referenza ghar-responsabbilta' politika illi kellu jgorr r-rikorrent ghal azzjoni ta' Tonio Briguglio, bhala persuna illi huwa hatar bhala Chairman tal-Bord tal-Istipendji.

## Ikkunsidrat

Jirrizulta illi, l-intimat, fid-difiza tieghu, qajjem l-argument illi dak illi intqal kien ibbazat fuq fatt verifikabbli u kummenti dwar kwistjonijiet fl-interess pubbliku dwar persuna pubblika li ghalhekk jikkonsistu f' 'fair comment'.

Dwar id-dritt tal-gurnalist illi jirrapporta dak li jidhirlu xieraq u korrett, il-Qorti taghmel referenza ghall kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, fejn saret referenza ghall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li ghandu jitlahaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tieghu protetta, fejn 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.*

Dwar ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti ghaddiet biex ghamlet is-segwenti osservazzjonijiet:

*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".*

*80. This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)*

*81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. 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.*

Ir-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandha tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, tghid hekk:



82. However, 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.

Tenut kont ta' dawna l-konsiderazzjonijiet kif fuq spjegati, il-Qorti ghandha, hekk kif tkun qieghda tikkunsidra l-kaz quddiemha, tassikura illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem niedet sitt kriterji importanti sabiex jigi assikurat illi, 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.

Il-Qorti, f'dana l-istadju, dwar in-natura tal-kritika ta' persuna politika, taghmel referenza ghas - sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, fejn jinghad illi:-

*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 **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, il-liberta' ta' l-espressjoni invokata mill-intimat kien gie dibattut fid-dettall u kien intqal is-segweni li huwa rilevanti ghad-difiza imressqa mill-intimat.

*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.*

## **Ikkunsidrat**

Applikati tali principji ghall-kaz odjern, a differenza taz-zewgt kazijiet l-ohra illi intavola r-rikorrenti in konessjoni ma' dina l-kwistjoni u li qed jigu decizi illum flimkien mal-kawza odjerna, il-Qorti tinnota illi huwa korrett jinghad illi r-rikorrent, bhala il-Ministru tal-Edukazzjoni, ghandu jerfa r-reponsabbilta' politika tal-azzjoni ta' persuna illi huwa kien qabbad bhala Chairman, ossija Tonio Briguglio.

Dana qieghed jinghad ghax, ghalkemm r-rikorrent ma ghandu ebda responsabbilta' personali fid-decizjoni li ttiehdet minn Tonio Briguglio biex iwaqqaf l-istipendji, madanakollu, bhala Ministru illi tahtu jaqa' il-Bord tal-Istipendji u, aktar u aktar, bhala il-persuna illi direttament qabbad lill Tonio Briguglio bhala Chairman ta' l-istess Bord tal-Istipendji, ir-responsabbilta' politika ta' l-azzjonijiet ta' Briguglio finalment jieqfu mar-rikorrent, illi huwa l-Ministru reponsabbli ghall-Edukazzjoni u ghalhekk huwa wkoll il-Ministru responsabbli ghall-ghoti ta' l-Istipendju lill-istudenti.

Il-Qorti tosserva wkoll illi l-intimat kien ukoll fid-dover illi jikkummenta dwar il-komposizzjoni tal-*'Bord ta' Investigazzjoni dwar Stipendji ghal Studenti li jsegwu kors ta' revizzjoni fil-livell Ordinarju fi Skejjel post-Sekondarji'*, u dana peress, abbazi tal-insenjament li l-gurnalist ghandu jkun il-*'public watchdog'* ghall-azzjonijiet u decizjonijiet ta' persuni pubblici moghnija bil-poter li jiddecidu fl-ahjar interess tal-pajjiz, l-intimat kellu jgharraf lill-qarrejja dwar min kien imqabbad sabiex jevalwa l-kaz odjern.

Il-Qorti, finalment tosserva illi, a differenza taz-zewgt kazijiet l-ohra illi qed jigu decizi illum stess gia fuq imsemmija, fil-kaz odjern, l-intimat qatt ma allega illi r-rikorrent kien direttament involut fid-decizjoni li biha tnehew l-istipendji ghal xi studenti izda kull ma sahaq huwa illi kien politikament responsabbli ghall-decizjonijiet mehudha minn persuni fi hdan il-Ministeru tieghu, aktar u aktar, f'dan il-kaz, minn persuna illi huwa kien personalment appunta bhala Chairman tal-Bord tal-Istipendji.

Ghalhekk, il-Qorti thoss illi, fil-kaz odjern, l-intimat kien qieghed jonora l-obbligu tieghu illi jgharraf lill-qarrejja tieghu dwar il-fatti kollha tal-kaz u dana minghajr ma ghadda kummenti li jtifghu responsabbilta' personalment fuq ir-rikorrent, u ghalhekk ma jistghux jitqiesu bhala libelluzi w malafamanti fil-konfront tar-rikorrent.

## **Konkluzjoni**

Il-Qorti ghalhekk,

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

**Tilqa** l-eccezzjonijiet kollha ta' l-intimat, u ghalhekk

**Tichad** it-talbiet attrici.

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

**Magistrat Francesco Depasquale**

**Marisa Bugeja**  
Deputat Registratur