



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn ghaxra (10) ta' Lulju 2017

Rikors Numru 164/11 FDP

Tonio Fenech (ID 200669M)
u
Claudine Fenech (ID 95375M)

vs

Joseph Muscat bhala mexxejj tal-Partit Laburista
U
Dr Stefan Zrinzo Azzopardi bhala President tal-Partit Laburista

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl 20 ta' Mejju 2011 fejn ir-rikorrenti, filwaqt illi ghamlu referenza ghall-istqarrija mahruqa mill-Ufficeju tal-Kommunikazzjoni tal-Partit Laburista nhar it-18 ta' Mejju 2011 intitolat '**Il-Ballun f'saqajn il-Prim Ministru**', talbu lill Qorti sabiex tiddikjara tali allegazzjonijiet libelluzi u malafamanti fil-konfront taghhom stante illi kienu intizi sabiex jtellfu jew inaqqsu r-reputazzjoni gieh u kredibilita' taghhom filwaqt illi talbu wkoll lill Qorti tikkundanna lill-istess intimat ihallas danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat ir-risposta ta' l-intimat ippresentata fit 28 ta' Settembru 2011 fejn laqghu ghal dak miltub billi stqarrew u eccepixxew is-segwenti:

1. Preliminarjament illi l-esponenti Joseph Muscat u Stefan Zrinzo Azzopardi ghandhom jigu liberati mill-osservanza tal-gudizzju billi huma mhumieq il-persuni li tal-artikolu 23 tal-Att dwar l-Istampa (Kap 248) kontrihom tista' tittiehed termini azzjoni civili fuq il-pubblikazzjoni li fuqha saret l-azzjoni prezenti.
2. Illi minghajr pregudizzju ghas-sueccept, l-esponenti ghandhom jigu liberati mill-osservanza tal-gudizzju fil-konfront tal-attrici Claudine Fenech billi fil-pubblikazzjoni li fuqha saret l-azzjoni prezenti hija ma tissemma, bl-ebda mod.

3. Illi f'kull kaz u minghajr pregudizzju ghas-succepit il-pubblikazzjoni imsemmija mill-atturi mhijiex libelluza fit-termini tal-ligi
4. Illi subordinatament, l-istess publikazzjoni tikkonsisti fl-espressjoni tal-fehmiet tal-Partit Laburista u kienet intiza bhala kritika politika mill-istess partit, u inoltre tikkonsisti f'kummenti fuq materja ta' interess publiku, fuq fatti sostanzjalment ammissibbli kemm taht il-Ligi ta' l-Istampa kemm taht il-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropeja dwar id-Drittijiet u l-Libertajiet Fondamentali tal-Bniedem.

Rat ix-xhieda ta' **Tonio Fenech** moghtija fil-25 ta' Mejju 2012 u d-dokumentazzjoni minnu esebita inkluz, fost affarjiet ohra, l-Istqarrija meritu tal-kawza odjerna datata 18 ta' Mejju 2011 (fol 24).

Rat ix-xhieda ta' **Edgar Galea Curmi** moghtija fis 16 ta' Marzu 2012 fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna.

Semghet ix-xhieda ta' **Nigel Vella**, ko-ordinatur tal-kommunikazzjoni tal-Partit Laburista moghtija fil-31 ta' Mejju 2013 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Keith Zahra**, fil-kapacita' tieghu ta' ex-ko-ordinatur tal-komunikazzjoni tal-Ministeru tal-Finanzi illi tieghu r-rikorrent kien il-Ministru meta xxandar l-ahbar meritu tal-kawza odierna, liema xhieda inghatat fil 31 ta' Mejju 2013.

Ra l-affidavit ta' **Jeffrey Montebello** u **Peter Montebello** datata 10 ta' Novembru 2009 u ppresentat mir-rikorrent fit 23 ta' Settembru 2013. (fol 120).

Semghet ix-xhieda tal-**Perit Tancred Mifsud** moghtija fit 23 ta' Settembru 2013.

Ra illi fit 23 ta' Settembru 2013 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet il-kontro ezami ta' Tonio Fenech illi saret fit 13 ta' Jannar 2014, liema xhieda, madanakollu, ma hargitx traskritta minhabba fi problema fis-sistema ta' traskrizzjoni.

Rat ix-xhieda ta' **Glenn Bedingfield** moghtija fis 17 ta' Novembru 2014 fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna.

Semghet ix-xhieda ta' **Wendy Borg** moghtija fis 17 ta' Novembru 2014 fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna..

Semghet ix-xhieda ta' **Charles Magro** moghtija fis 17 ta' Novembru 2014 (fol 143) fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna..

Semghet il-kontro ezami ta' Tonio Fenech illi saret fis 6 ta' Lulju 2015 .

Rat id-dokumenti esebiti minn Glenn Bedingfield fil-kawza fuq imsemmija Rikors Nru 450/09 fit 3 ta' Dicembru 2015, ossija kopja tal-artikolu intitolat 'Bi Pjacir' ppubblikat fuq il-gazzetta MaltaToday fil harga tat 8 ta' Novembru 2009 u sentenza tal-Qorti tal-Magistrati Malta bhala Qorti ta' Gudikatura Kriminali datata 19 ta' April 2013 fl-ismijiet 'Il-Pulizija vs Geoffrey Montebello u Peter John Montebello' fejn ma nstabux hajta ta' akkuzi ta' atti ta' korruzzjoni fil-konfront ta' Noel Borg Hedley. (fol 164).

Semghet ix-xhieda ta' **Noel Borg Hedley** moghtija fit 18 ta' April 2016 fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna.

Semghet ix-xhieda ta' **Peter Montebello** prodott taht arrest fuq ordni tal-Qorti mill-intimat fit 2 ta' Gunju 2016. (fol 192)

Semghet ix-xhieda ta' **Jeffrey Montebello** prodott taht arrest fuq ordni tal-Qorti mill-intimat fit 2 ta' Gunju 2016. (fol 221)

Rat illi fl-10 ta' Novembru 2016 il-partijiet qabblu illi, sa fejn applikabbli, ix-xhieda prodotta fil-kawza Rik Nru 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' kienu applikabbli ukoll ghall-kaz odjern.

Semghet ix-xhieda ta' **Saviour Balzan** moghtija fl-10 ta' Novembru 2016 fil-kawza 450/09 fl-ismijiet 'Tonio Fenech vs Glenn Bedingfield' illi qed tinstema kontestwalment mal-kawza odjerna.

Rat id-dokumentazzjoni esebita mill-intimat fl-10 ta' Novembru 2016.

Rat illi fis 26 ta' Jannar 2017 il-partijiet qablu illi ma kienx hemm aktar provi x'jipresentaw.

Rat is-sottomissjonijiet tal-abbli difensur tar-rikorrent ippresentati fl-24 ta' Marzu 2017.

Rat illi fit 22 ta' Mejju 2017 il-kawza giet differita ghas-sentenza ghallum.

Rat is-sottomissjonijiet tal-abbli difensur ta' l-intimat ippresentati fit 30 ta' Gunju 2017.

Ikkunsidrat

Jirrizulta, mill-provi prodotti quddiem dina l-Qorti, illi fid-data tal-pubblikazzjoni ta' l-Istqarrija mahruqa mill-Ufficcju tal-Komunikazzjoni tal-Partit Laburista, ossija fit 18 ta' Mejju 2011, ir-rikorrent kien jokkupa il-kariga ta' Ministru tal-Finanzi, Ekonomija u Infrastruttura fil-Gvern tal-gurnata.

Jirrizulta wkoll illi l-intimat kien xtara villa gewwa Hal Balzan fis-sena 2009 u kien ried jaghmel xogholijiet struttural u ta' finihsing gewwa fiha sabiex imur jabitha fiha mill-aktar fis possibbli peress illi kien biegh il-post illi kellu precedentement u kien qieghed fuq konvenju illi jaghlaq tali bejgh malli jidhol fil-villa l-gdida illi kien xtara.

Jirrizulta illi r-rikorrent, dak iz-zmien qabbad lill ahwa Jeffrey u Peter Montebello, tad-ditta JPM Brothers, illi huwa kien jafhom peress illi kienu konstitwenti tieghu fid-distrett ta' Birkirkara u li kienu jghinuh fl-attivitajiet politici tieghu, u dana qabbadhom sabiex jieghdu hsieb illi jaghmlulu x-xogholijiet kollha illi kien hemm bzonn.

Jirrizulta illi l-ahwa Montebello, illi kellhom varji xogholijiet ta' kostruzzjoni ma' Malta, sussegwentement qabbdu lill-Charles Magro, ta' Rainbow Turnkey Projects Limited, sabiex jaghmlu tali xogholijiet fil villa.

Jirrizulta illi, wara illi Charles Magro baghat 'Quotation' tax-xogholijiet illi kellhom isiru fis 26 ta' Frar 2009 (fol 44), inizzjalment, ix-xoghol beda miexi sew u l-istess Magro, ossija is-socjeta tieghu

Rainbow Turnkey Projects Limited irceviet l-ewwel pagament ta' €15,000 minghand is-socjeta JPM Brothers Limited fit 23 ta' April 2009.

Jirrizulta illi, sussegwentement mar fuq il-post ir-rikorrent u talab lill Rainbow Turnkey Projects Limited sabiex jaghmel xogholijiet addizzjonali.

Jirrizulta, madanakollu, illi bdew jinjalghu l-problemi bejn l-ahwa Montebello u Rainbow Turnkey Projects peress illi l-ahwa Montebello kienu qed jinsistu ma' Montebello illi huma kienu hallsu lill Magro l-ewwel pagament ghall-villa tar-rikorrent filwaqt illi Magro kien qieghed jinsisti illi parti minn dak il-pagament kellu jinqata minn kont ghal xogholijiet ohra illi ma kellhomx x'jaqsmu mar-rikorrent.

Jirrizulta illi tali dewmien fil-pagamenti wassal ghall dewmien fix-xoghol u kif rah hekk, ir-rikorrent dahal fil-kwistjoni hu u, wara li ddiskuta kemm ma' l-ahwa Montebello kif ukoll ma' Charles Magro, wasal fi ftehim ma' Magro illi Montebello jinhargu 'l barra mill-ftehim u Magro jifthieme direttament mar-rikorrent u l-pagamenti isiru direttament mir-rikorrent.

Jirrizulta, di fatti, illi fit 18 ta' Gunju 2009 Rainbow Turnkey Projects Limited harget kont direttament lir-rikorrent tax-xogholijiet kollha illi kienu saru, li kienu jammontaw ghal €40,956.62. (fol 38)

Jirrizulta ukoll illi fit-2 ta' Lulju u id-9 ta' Lulju 2009 ir-rikorrent effettwa pagament lill-Rainbow Turnkey Projects Limited rispettivament ta' €10,000 u €20,000 (fol 30 u fol 28) u jidher illi, skond l-istess kont fuq imsemmi datat 18 ta' Gunju 2009, dawna l-pagament jidhru gia inkluzi (!!!) bir-riżultat li kien jidher li kien hemm bilanc ta' €1,333.11.

Jirrizulta illi fit 18 ta' Gunju 2009 Rainbow Turnkey Projects Limited harget kont iehor ta' €28,806.06. (fol 36)

Jirrizulta illi sussegwentement, fit-17 ta' Lulju 2009, is-socjeta Rainbow Turnkey Projects Limited harget kont ulterjuri ghal xogholijiet zejda illi saru fl-ammont ta' €7,367.98 (fol 35), liema kont gie reviz permezz ta' kont iehor datat 31 ta' Lulju 2009.

Jirrizulta wkoll illi fis 17 ta' Lulju 2009 ir-rikorrent ghamel pagament ta' €10,000 ohra (fol 29)

Jirrizulta illi fil-kont tieghu tal-31 ta' Lulju 2009, is-socjeta Rainbow Turnkey Projects Limited madanakollu kienet qieghda tindika illi l-bilanc €22,064.38 wara t-tnaqqis rilevanti. (fol 33)

Jirrizulta illi Charles Magro kiteb lir-rikorrent fil 31 ta' Lulju 2009 fejn qallu s-segwenti:

Dear Sir,

The discount in discussion was agreed upon verbally on condition that:

Payment were to be issued every two (2) weeks

On the prices agreed upon originally

On the whole completed project

Regretably, neither of the above conditions was respected by JPM Brotehrs therefore we are sorry to say that we can no longer offer the same terms

We appreciate your understanding and hope we can conclude business as soon as possible.

Best Regards

Jirrizulta illi sussegwentement, fis-27 ta' Settembru 2009, ir-rikorrent kiteb direttament lill Charles Magro fejn qallu s-segwent:

With reference to your letter dated 31 July 2009 and the subsequent e-mail sent to you by my architect Tancred Mifsud on the 4 August 2009 (copy attached); and following your partial completion of the defective works identified by the same architect, and having received the payment request by the subsequent contractor for the uncompleted works left by your company following the abandonment of the site Saturday 1 August 2009; I am now in a position to give you the full account of what, following the professional advice given to by the same architect, is the settlement position.

May I remind you that you were the main subcontractor for JPM Brothers who were engaged by myself and my wife, and it was only following your persistent delays in delivery because of the difficulties you claimed to be having with JPM Brothers, and their seeming inability to ensure delivery, that we agreed on the 2nd July 2009 to terminate our arrangement with JPM and enter into a direct relationship with you. May I further point out that we could have simply asked JPM (and its contractors) to withdraw from the site for failing to deliver and appoint a new contractor; leaving your company to settle any amounts due from JPM, that is, the company with which you were engaged.

Our agreement with you was based on the following basic conditions to which you had agreed in the meeting held 2nd July 2009 at my office in Valletta, in the presence of your partner. We had then agreed that:-

we would settle amounts outstanding on a regular basis, to which we had agreed and honoured through three successive weekly payments amounting to Euro 40,000 in total. In fact we had settled Euro 10,000 on that date, Euro 20,000 in the subsequent week and another Euro 10,000 in the following week.

- We would accept the quote with JPM issued on the 26 February 2009 No0985, even though the rates appeared to the architect Tancred Mifsud as being on the high side. From your end you offered to honour the discount of Euro 5,167 previously agreed with JPM on that quotation.*
- You would complete the project by the end of July 2009.*
- Amounts due would be based on measurement and rates agreed with my architect as fair and reasonable.*

I must express our disappointment that, not only did you not complete the project on time but with complete disregard for the hardship you were going to cause to my family and, placing at risk our contractual obligations with third parties (having sold our property on konvenju and having to pass my former residence to the buyers in the first week of September), you tried to use this situation to take unfair financial advantage by claiming extremely high rates on added works, far beyond the architect's reasonable assessment and demanding their acceptance under the threat of abandoning the site. This was tantamount to exerting moral violence on us, since you well knew the indispensability for us of the works being finished on time.

This in fact you did a mere two weeks before our planned move which left me with me serious problem of trying to find a contractor willing and available to take over the works and complete them in such a short space of time. For this distress and hardship I am deducting a penalty of Euro 3,000 from the final bill, which is quite a conservative sum, keeping in mind the abusive and unacceptable manner in which you conducted yourself.

In the case invoice I508J09, we have reduced the invoice by Euro 2,741 (exclusive of VAT). As you well recall the rates claimed in your invoice were unjustifiably over-priced and following a review by the architect these were reviewed to levels which the architect still considered generous by market standards. The prices quoted on your last invoice were only accepted as a compromise in order for both sides to come to a settlement and conditional to concluding your works within the time frames agreed.

This, as you are well aware, was not honoured by yourself, and therefore we are insisting on the previous prices established by the architect as being fair and reasonable.

A reduction of Euro 5,894.10 is being made from the amount due to you for works that had to be completed by the new contractor, and which works you had left incomplete. These amounts have been assessed by architect Tancred Mifeud for fair and reasonableness and ensured that they accounted for works that had to be completed by your company, and for which we had been billed. The unnumbered Adjustment schedule amounting to Euro 3,442.77 has not been taken into account in our statement of finalisation due to its incompleteness.

In the payments summary, I re-iterate our position that JPM have repeatedly confirmed that from invoice no 1507J09 they had already settled Euro 15,000. Therefore if there remain any unsettled amounts by JPM on any other works your company had done in the past, I expect that you clear such disputes directly with them.

On the advice of architect Tancred Mifsud, we are also retaining Euro 1,000 as retention money. This was necessary due to the structural defects in works carried out on the paving of the back yard, where areas have already subsided and re-grouting was necessary. Since there is no certainty that the works you have performed have resolved the problems identified, and since therefore future further interventions may be required, this amount will be retained until the architect feels that no further interventions will be required.

We also need to receive assurance that all subcontractors have been settled from your end as it appears that you have not yet settled the amounts due to the former tile layer came to our house expressing his concern, when works by the new contractor were underway.

I hope that this letter and statement clarify our position and settle this situation.

I am attaching HSBC cheque number 992 amounting to Euro 905.12 in full and final settlement of any outstanding claims, with Euro 1,000 being paid by us to you in 12 months' time once our architect is satisfied that any settlement of the paving will not require any further intervention.

So much for your guidance.

Jirrizulta illi sussegwentement Charles Magro mar ghand is-Segretarju General tal-General Worker's Union ta' dak iz-zmien, Tony Zarb li, minn naha tieghu, ikkomunika ma' Edgar Galea Curmi, dak iz-zmien Kap tas-Segretarjat tal-Ufficcju tal-Prim Ministru, sabiex jirringa appuntament ghal Charles Magro sabiex jiltaqa mieghu.

Jirrizulta, di fatti, illi fit-22 ta' Ottubru 2009, is-Sur Edgar Galea Curmi ltaqa' ma' Charles Magro fejn dan ta' l-ahhar talbu sabiex jintervjeni mar-rikorrent biex tissolva l-kwistjoni tal-pagamenti dovuti lilhom peress illi, skond kliem Edgar Galea Curmi, huma ma riedux jimbarazzaw lir-rikorrent billi jibdeu proceduri civili fil-konfront ta' l-ahwa Montebello.

Jirrizulta wkoll illi ftit qabel, Charles Magro baghat ittra interpellatorja lir-rikorrent tramite il-konulent legali tieghu fl-14 ta' Ottubru 2009 fejn talab illi jithallas €20,254.26.

Jirrizulta illi fit-8 ta' Novembru 2009, deheret storja fuq il-gazzetta ta' nhar ta' Hadd, MaltaToday intitolata 'Bi Pjacir', fejn Charles Magro gie intervistat mill-istess gazzetta u gharrafhom illi l-ahwa Montebello kienu qalulu illi x-xoghol illi kien qed isir fuq il-villa tar-rikorrent kien qed isir minnhom bi pjacir lejn il-Ministru sabiex ikun jista jghinnhom fil-bejh tal-Jerma lill Joe Gasan u George Fenech.

Jirrizulta illi, dakinhar stess, il-Hadd 8 ta' Novembru 2009, il-gurnalista tal-One TV Wendy Borg marret l-ufficju tal-Ministeru tar-rikorrent, fejn huwa kellu jidhol in vista tal-Budget illi kien ser jissejjah l-ghada, sabiex tottjeni kumment minghand ir-rikorrent, izda dana ma wegibhiex.

Jirrizulta illi madanakollu, ftit wara ir-rikorrent jidher illi hareg staqrija ghall-Istampa, ghalkemm tali staqrija qatt ma giet ppresentata l-Qorti.

Jirrizulta illi l-istorja giet eventwalment irrappurtata fl-ahbarjiet tas-19.30pm tat 8 ta' Novembru 2009 u il 11 ta' Novembru 2009 u huma l-meritu tal-kawza Rik Nru 450/09 fuq imsemmija.

Jirrizulta illi Charles Magro qatt ma nieda proceduri kontra r-rikorrenti ghall-hlas tal-bilanc illi huwa kien jikkontendi illi kien dovut u li ha hsieb illi l-mezzi kollha tax-xandir kienu jafu illi huwa kien qieghed jippretendi li jithallas.

Jirrizulta illi fit 18 ta' Mejju 2011, ossija ftit anqas minn sentejn wara illi harget l-istorja originalment, il-Partit Laburista, tramite l-Ufficcju tal-Komunikazzjoni tieghu, hareg is-segwent Stqarrija:

Tonio Fenech jibqa' jaghzaq ... Il-ballun f saqajn il-Prim Ministru

Il-Ministru tal-Finanzi Tonio Fenech ghandu ragun meta jghid li l-pozizzjoni tieghu hija determinata mill-Prim Ministru.

Wara sena jaghzaq, bi skandlu wara l-iehor, jidher li Tonio Fenech ma nidimx.

B'hekk issa huwa l-Prim Minsitru li ghandu jiehu azzjoni u jnehhi lil Tonio Fenech

Fl-ahhar tliet snin taht il-Ministru Tonio Fenech kellna:

- *Ix-xoghol bi pjacir li kienu qed jaghmlulu l-kuntratturi JPM Brothers (l-ahwa Montebello) fid-dar tieghu bhala senserija ghall-bejgh tal-Jerma*
- *Ma hallasx lis-subcontractors Rainbow Turnkey imqabba mill-ahwa Montebello.*
- *Baq' ma ghamilx libell dwar l-allegazzjonijiet ta' Charles Magro, direttur ta' Rainbow Turnkey.*
- *L-eks Segretarju Privat ta' Tonio Fenech, Noel Borg Hedley, instab hati ta' korruzzjoni talli ha flus minghand Montebello biex jirringa fuq stimi ta' propjeta u multi fuq taxxi.*
- *Noel Borg Hedley qal li uza flus minghand Montebello ghall-kampanja elettorali ta' Tonio Fenech.*
- *Mar safra fuq jet privat ta' zewg negozjanti biex imur jara loghba futbol.*
- *Rapport ta' Awditjar li kixef nuqqasijiet gravi fid-Dipartiment tal-VAT u telf kbir ta' miljuni ghal taxpayers Maltin.*
- *Dahhal tariffi esagerati tad-dawl u l-ilma li ghaffgu lin-nies.*
- *Falla fil-miri finanzjarji tal-pajjiz.*
- *Iddikjara li mhux se jimpjega xi 'cuc Malti' bhala CEO tal-Air Malta.*
- *Ammetta pubblikament li ma hallasx bolla ghas-servizz moghti mis-seftura tieghu*

Dawn huma l-kazijiet kollha tal-misthija li kien involut fihom il-Ministru Tonio Fenech.

Ta' dan kollu, Tonio Fenech inghata zieda ta'€500 fil-gimgha u allowances godda mill-Prim Ministru Gonzi.

Jekk il-Prim Ministru Lawrence Gonzi ma jiehux azzjoni jkun qed juri li hu japprova it-tahwid kollu li kien involut fih s'issa Tonio Fenech.

Jekk il-Prim Ministru ma jnehix lil Fenech, il-poplu ma jkollux ghazla ohra hliet inehhi lil Lawrence Gonzi minn Prim Ministru.

*Ufficcju tal-Komunikazzjoni
Partit Laburlsta*

Ikkunsidrat

Jirrizulta, mill-eccezzjonijiet varji illi ressqu l-intimati in difiza tal-kaz tieghu, illi d-difiza tieghu hija principalment ibbazata fuq tlett argumenti, ossija dik illi l-intimati ghandhom jigu liberati mill-osservanza tal-gudizzju ghax ma humiex il-persuni li ai termini tal-Art 23 tal-Att dwar l-Istampa tista tittiehed azzjoni kontrihom, illi ghandhom jigu liberati mill-osservanza tal-gudizzju in kwantu tirrigwarda Claudine Fenech peress ili huwa qatt ma ssemiet u illi kienu qiegħdin jezercitaw d-dritt

tagghom ta' kritika politika dwar fatti li kienu gia gew zvelati lill-pubbliku kif ukoll illi dak irrappurtat kien biss fair comment dwar kwistjoni ta' interess pubbliku, aktar u aktar tenut kont tal-fatt illi r-rikorrent kien persuna pubblika.

Il-Qorti, qabel xejn, tosserva illi ma ghandu jkun hemm ebda dubju illi, dak iz-zmien, ir-rikorrent kien persuna fil-politika u, ghalhekk, pesuna pubblika u, bhala politiku, ghandu jkun suggett għall-livell ta' kritika ferm oghla minn dik ta' persuna privata. Kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll:-

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.

Dwar kontra min ghandhom jittiehdu l-proceduri, l-Artikolu 23 tal-Kap 248 jipprovdi illi:

.... l-azzjoni civili taht it-Taqsima III ta' dan l-Att tista' tittiehed kontra kull wahda minn dawn il-persuni li gejjin:

(a) l-awtur tal-kitba, jekk huwa jkun kitibha sabiex tiġi ppubblikata, jew jekk ikun ta l-kunsens tiegħu għalhekk;

(b) l-EDITOR;

jew, jekk dawk il-persuni ma jkunux jistgħu jiġu identifikati,

(c) ir-responsabbli għall-pubblikazzjoni.

Jidher ukoll illi l-intimat qajjem ukoll, fid-difiza tiegħu, l-argument illi dak minnu hemm irrappurtat kien 'fair comment', u ghalhekk ma setax jitqies bhala libelluz.

Dwar l-principji tad-difiza tal-*'fair comment'* **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-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jsehħlu 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; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' 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 illi l-awtur ta' l-Istqarrija ma huwiex identifikabbli mill-Komunikazzjoni kif ippubblikata u ma hemm indikat ebda persuna ili ha ir-responsabbilta' ta' tali pubblikazzjoni.

Jirrizulta wkoll illi ma ghandu jkun hemm ebda dubju illi l-Kap tal-Partit w il-President ta' l-istess Partit ghandhom jitqiesu bhala l-persuna responsabbli minn kull azzjoni ta' l-istess Parti Laburista u ghalhekk, a tenur tal-Artikolu 23(c) kif fuq kwotat, ghandhom ikunu responsabbli tal-komunikazzjonijiet ta' l-istess Partit, aktar u aktar meta ma gie imkien indikat min kien l-awtur tal-komunikazzjoni meritu tal-kawza odjerna.

Ikkunsidrat

Jirrizulta illi, fost l-allegazzjonijiet illi saru fil-konfront tar-rikorrent fl-iStqarrija, l-awtur ghamel is-segwenti allegazzjonijiet fil-konfront tieghu:

- *Ix-xoghol bi pjacir li kienu qed jaghmlulu l-kuntratturi JPM Brothers (l-ahwa Montebello) fid-dar tieghu bhala senserija ghall-biegh tal-Jerma*
- *Ma hallasx lis-subcontractors Rainbow Turnkey imqabba mill-ahwa Montebello.*
- *Noel Borg Hedley qal li uza flus minghand Montebello ghall-kampanja elettorali ta' Tonio Fenech*

Jirrizulta, madanakollu, illi mill-provi kollha prodotti mill-intimati, ghajr ghall fatt illi kien minnu illi l-ahwa Montebello kienu jghaddu xi flejjes lill Noel Borg Hedley sabiex dawna jintuzaw fil-kampanja tar-rikorrenti, l-allegazzjonijiet l-ohra ma gewx ippruvat.

Jirrizulta, di fatti, illi, a differenza ta' dak illi qieghed jigi allegat minn Charles Magro, illi kellu kull interess illi joskura lir-rikorrent wara illi pprova jgieghlu jhallsu dak li ma kienx dovut lilu billi jmur juzgah lill-Prim Ministru tramite is-servizzi tas-Segretarju Generali tal-General Workers' Union, l-ahwa Montebello t-tnejn ikkonfermaw illi ma kien minnu assolutament xejn illi qatt qalulu illi x-xoghol kien qieghed isir bi pjacir lir-rikorrenti sabiex jagevolhom u jghinnhom fil-bejgh tal-Jerma Hotel meta huwa kien fil-kariga ta' Ministru.

Jirrizulta, in fatti, ghal darba ohra a differenza ta' dak illi qieghed jipprova jallega Charles Magro, li uza l-mezzi tax-xandir sabiex jitfa dell ikrah fuq ir-rikorrent ghax huwa ma inqedhiex meta mar ghand is-Segretarju Privat tal-Prim Ministru, l-istess Magro hareg statement datat 18 ta' Gunju 2009 (fol 34 tal-process Rik Nru 450/09), illi huwa kwazi l-istess ghal dak illi huwa kien hareg originalment lill-ahwa Montebello fis 26 ta' Frar 2009 (fol 20 tal-process Rik Nru 450/09), fl-ammont ta' €40,956.52, fejn juri illi minn dana l-ammont kien thallas €30,000 mir-rikorrent u is-somma ta' €9,623.51 f'cash, bir-rizultat illi kien fadal bilanc ta' €1,333.11.

Jirrizulta illi sussegwentement saru xogholijiet ulterjuri u r-rikorrent hallsu €10,000 ohra filwaqt illi imbghad inqalghu kwistjonijiet dwar in-natura tax-xoghol w l-agir ta' Charles Magro illi qabad u abbanduna l-lant tax-xoghol minkejja illi kien jaf ben sew l-urgenza sabiex jitlestew ix-xogholjiet, rizultat ta' liema agir ir-rikorrent hallas biss ammont iehor ta' €905.12, ghas-saldu, li gie accettat minn Magro ghalkemm baqa' jinsisti illi irid jithallas €20,000.

Jirrizulta, ghalhekk, illi mhux talli ir-rikorrent ma hallas xejn, izda illi hallas lill Magro ben oltre erbghin elf euro ghal xoghol illi eventwalment ma lestihies ghax abbanduna l-lant tax-xoghol, u dana il-pagamenti saru kollha mir-rikorrent.

Jirrizulta wkoll illi, ghal dak illi qieghed jallega Charles Magro illi x-xoghol kien qieghed isir bi pjacir, mhut talli tali prova ma tressqietx, izda talli tressqu provi sufficjenti biex juru illi Charles Magro, fl-allegazzjonijiet tieghu, ma tantx huwa kredibbli, stante illi ma gab assolutament ebda tip ta' provi in sostenn tal-asserzjoni tieghu illi r-rikorrent kellu jhallsu aktar minn ghoxrin elf Euro, u wera bl-aktar mod car illi l-modus operandi tieghu kienet wahda intiza unikament sabiex jipprova jakkwista kemm jiflah, u kien dispot sahsitra jmur ghand il-Prim Ministru wara illi talab l-intervent tas-Segretarju Generali tal-General Worker's Union, biex jipprova jimmanipula lir-rikorrent biex ihallsu dak illi ma kienx dovut lilo.

Ikkunsidrat

Dina il-Qorti tosserva illi hija sfortuna kbira illi l-politici kollha jaghtu spazju u importanza lill nies bhal Charles Magro illi huma disposti illi jhammgu u jattakkaw lill kull minn jaqbillhom unikament sabiex ikunu jistghu jiggwandanjaw aktar finanzjarjament filwaqt illi jintghogbu ma min huwa politikament oppost ghal persuna illi qed tigi attakata, fatt illi, aktar ma jsir ta' spiss, aktar qieghed tnaqqas il-fiducja u kredibilita' fil-politici in generali, liema fiducja u kredibilita' hija l-qofol tax-xoghol tal-politiku u jkun ghajb kbir ghas-socjeta taghna u d-demokrazija in generali jekk il-fiducja fil-politiku titnaffar ulterjorment, stante illi pajjiz b'demokrazija b'sahhitha ghandha bzonn ukoll politici ta' integrita' u maturita' bizzzejjed biex imexxu l-quddiem il-pajjiz minghajr ma joqghodu jintilfu f'attakki personali ibbazati fuq allegazzjonijiet ta' terzi illi jkollhom il-motivi personali taghhom sabiex jaghmlu tali allegazzjonijiet, u certament mhux l-ahjar interess tal-pajjiz.

Dina il-Qorti ma tistax ma tirrepetix *ad nauseam* dak illi gie osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016.

Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbaghad tipprova tistahba wara dan id- dritt.

Mill-provi kollha prodotti, il-Qorti ma tistax ma tasalx ghal konkluzjoni illi l-kummenti illi saru kienu bbazati fuq fatti inkorretti u li setghu jigu verifikati u li ghalhekk il-kontenut tal-ahbar kien libelluz u malafamanti fil-konfront tar-rikorrenti.

Madanakollu, il-Qorti tosserva illi huwa minnu illi Claudette Fenech qatt ma semmiet fl-Istqarrija tal-Partit Laburista u ghalhekk l-intimati ghandhom jigu liberati mill-osservanza tal-gudizzju fil-konfront taghha filwaqt illi dana ser ikun rifless fid-danni u spejjez kif moghtija minn dina l-Qorti.

Konkluzjoni

Il-Qorti,

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 it-tieni eccezzjoni u tillibera lill-intimati mill-osservanza tal-gudizzju fil-konfront ta' Claudine Fenech, filwaqt illi

Tichad il-kumpliment tal-eccezzjonijiet l-ohra ta' l-intimati,

Tilqa it-talbiet attrici, u ghalhekk, filwaqt illi

Tiddikjara il-kontenut tal-Istqarrija mahruga mill-Ufficcju tal-Komunikazzjoni tal-Partit Laburista fit 18 ta' Meju 2011 bhala libelluza u malafamanti fil-konfront tar-rikorrenti Tonio Fenech.

Tikkundanna lill-intimat ihallas lir-rikorrent Tonio Fenech bhala danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta' elf Euro (€1,000).

Kull parti ghandha tbaghti l-ispejjez taghha u Imghax fuq is-sorti mid-data tas-sentenza sad-data tal-pagament effettiv a karigu ta' l-intimati.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur