



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

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

Rikors Numru 450/09 FDP

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

vs

Glenn Bedingfield
(ID 550774M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit 13 ta' Novembru 2009 fejn ir-rikorrenti, filwaqt illi ghamlu referenza ghall-allegazzjonijiet illi gew ppubblikat u mxandra fuq One TV fl-ahbarjiet tas 19.30 tat 8 ta' Novembru 2009 u tal-11 ta' Novembru 2009, liema ahbarjiet ghamlu referenza diretta ghar-rikorrenti u l-kwistjoni privata u civili li huma seta kellhom dwar xogholijiet fid-dar taghhom, 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 fil 25 ta' Marzu 2010 fejn laqa' ghal dak miltub billi sqarr u eccepixxa s-segwenti:

1. Illi fl-ewwel lok, ir-rikorrenti ghandhom jipproducu traskrizzjoni tal-bulettini tal- ahbarijiet indikati minnhom flr-rikors u jindikaw b'ezattezza fejn hassewhom malafamati.
2. Illi fit-tieni lok l-ahbar de quo mhux libelluz fil-konfront tar-rikorrenti.
3. Illi fit-tielet lok l-intimati ippruvaw jaghtu dritt ta' risposta 1 ir-rikorrenti Tonio Fenech pero dan irrifjuta li jiehu din l-opportunita.

4. Illi fir-raba lok u minghajr pregudizzju ghas-suespost, l-intimat Glenn Bedingfield qua Kap tat-Taqsima Ahbarijiet ta' One Television kien qiegħed jezercita d-dritt gurnalistiku tieghu u jikkummenta dwar fatti li kienu ġa ġew zvelati lill-pubbliku in generali f dak il-perjodu mill-gazzetti lokali u li kellhom fic-centru tagħhom lir-rikorrent Tonio Fenech li huwa persuna pubblika.
5. Illi fil-hames lok u minghajr pregudizzju ghas-suespost, fil-bulettini tal-ahbarijiet de quo hemm biss fatti magħrufa u fair comment dwar kwistjoni t'interess pubbliku, liema kummenti huma accettabli f socjeta demokratika, kif ukoll kemm taht il-Ligi tal-stampa u ukoll taht il-Konvenzjoni Ewropeja dwar id-Drittijiet tal-Bniedem

Rat ix-xhieda ta' **Tonio Fenech** mogħtija fl-1 ta' Frar 2011 u d-dokumentazzjoni minnu esebita inkluz, fost affarjiet ohra, t-traskrizzjoni tax-xandira.

Rat illi fis 17 ta' Ġunju 2011 dina l-Qorti, kif komposta, hadet konjizzjoni tal-atti tal-process.

Semgħet ix-xhieda ta' **Edgar Galea Curmi** mogħtija fis 16 ta' Marzu 2012.

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

Semgħet 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 ingħatat 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).

Semgħet ix-xhieda tal-**Perit Tancred Mifsud** mogħtija fit 23 ta' Settembru 2013 fil-kawza Rik Nru 164/2011 fl-ismijiet 'Tonio Fenech vs Joseph Muscat et' illi qiegħda tinstema flimkien mal-kawza odjerna.

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

Ra illi fl-10 ta' Ottubru 2014, wara sitt seduti fejn l-intimat naqas milli jressaq provi, il-Qorti ddikjarat il-provi magħluqa.

Ra illi fil 21 ta' Ottubru 2014, wara rikors ta' ġustifikazzjoni da' parte ta' l-intimat, il-Qorti akkordat id-dritt lill-intimat sabiex iressaq il-provi tieghu.

Semgħet ix-xhieda ta' **Glenn Bedingfield** mogħtija fis 17 ta' Novembru 2014. (fol 134)

Semgħet il-kontro ezami ta' Tonio Fenech illi saret fis 17 ta' Novembru 2014.

Semgħet ix-xhieda ta' **Wendy Borg** mogħtija fis 17 ta' Novembru 2014.

Semgħet ix-xhieda ta' **Charles Magro** mogħtija fis 17 ta' Novembru 2014 (fol 143).

Rat id-dokumenti esebiti mill-intimat 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.

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)

Semghet ix-xhieda ta' **Saviour Balzan** moghtija fl-10 ta' Novembru 2016.

Rat id-dokumentazzjoni esebita mill-intimat fis 26 ta' Jannar 2017.

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

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

Rat is-sottomissjonijiet tal-abbli difensur ta' l-intimat ippresentati fit 12 ta' Mejju 2017.

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

Ikkunsidrat

Jirrizulta, mill-provi prodotti quddiem dina l-Qorti, illi fid-data tal-pubblikazzjoni tal-ahbar meritu tal-kawza odjerna fuq l-ahbarjiet tal-One TV, ossija fit 8 u 11 ta' Novembru 2009, 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 f'dawk iz-zminijiet 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 jiehd u 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 20), 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 (fol 24).

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

Jirrizulta, madanakollu, illi l-ahwa Montebello waqghu lura fil-pagamenti ma Rainbow Turnkey Projects, kif jidher f'email mibgħtua millistess socjeta lill Myranne Montebello fil 11 ta' Mejju 2009 (fol 23).

Jirrizulta, di fatti, illi l-ahwa Montebello kienu qed jinsistu ma' Montebello illi huma kienu hallsu lill Magro l-ewwel pagament għall-villa tar-rikorrent filwaqt illi Magro kien qiegħed jinsisti illi parti minn dak il-pagament kellu jinqata minn kont għal xogħolijiet ohra illi ma kellhomx x'jaqsmu mar-rikorrent.

Jirrizulta illi tali dewmien fil-pagamenti wassal għall dewmien fix-xogħol 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-xogħolijiet kollha illi kienu saru, li kienu jammontaw għal €40,956.62. (fol 32)

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 25-28) u jidher illi, skond l-istess kont fuq imseii datat 18 ta' Gunju 2009, dawna l-pagament jidhru ġia inkluzi (!!!) bir-rizultat li kien jidher li kien hemm bilanc ta' €1,333.11.

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

Jirrizulta wkoll illi fis 17 ta' Lulju 2009 ir-rikorrent għamel pagament ta' €10,000 ohra (fol 28)

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

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

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-Segtetarju 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-konsulent 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, f'it wara ir-rikorrent jidher illi hareg stqarrija ghall-Istampa, ghalkemm tali stqarrija qatt ma giet ppresentata l-Qorti.

Jirrizulta, finalment, illi fl-ahbarjiet tas 19.30pm ta' dakinhar stess, l-intimat, bhala gurnalist tal-One TV, tella s-segwenti ahbar, illi huwa l-meritu tal-kawza odjerna:

Pjacir ta' 70000 ewro. Tonio Fenech involut f'kaz iehor li jikser il-Kodici tal-Etika. L-Oppozizzjoni tinsisti ghal spjega minghand il-Prim Ministru w il-Ministru koncernat.

Pjacir ta' 70000 ewro ghal Ministru Tonio Fenech minn kompaniia illi kien qed jghinha biex tbiegh il-lukanda Jerma. Il-kaz tal-pjacir lil-Ministru Fenech kien zvelat mill-gumal Malta Today fejn jinghad li, talli kien qed jghinhom ibieghu l-Jerma, l-ahwa Montebello kienu se jhallsulu xoghohjiet strutturarii fid-dar il-gdida tieghu. Il-Ministru cahad l-istorja mal-gurnal u ma' One News harab milli jikkumenta.

Il-Kitba ta' Glenn Beddingfield.

Aktar inkwiet ghal Mmistru Tonio Fenech li jinsab involut f'kobba mhabbla ta' kaz iehor li jinvolti laqghat u eluf ta' ewro. Il-Ministru tal-Finanzi kien qed jipprova jghin lill-ahwa Montebello ibieghu l-lukanda Jerma u ta' dan bhala pjacir kienu qed ihallsulu x-xoghohjiet fid-dar il-gdida tieghu f'Hal-Balzan. Pjacir li kien jiswa mas-70,000 ewro li minnhom 20,000 ewro ghadhom ma thallsux minhabba li n-negozju tal-Jerma ma mmatterjaiizzax.

Tonio Fenech qed jichad dan kollu. Jghid li mal-JPM tal-ahwa Montebello m'ghandu xejn x'jaqsam. Jghid ukoll li hallas il-kont kollu lill-kumpanija Rainbow li ghamlet ix-xoghohjiet bhala subcontractor tal-kumpanija JPM.

Izda l-kumpanija Rainbow tghid li ghandha tiehu 20,000 ewro tax-xoghol li ghamlet fid-dar tal-Ministru f'Hal-Balzan u li la thallsu minn Montebello skont il-ftehim originali u lanqas thallsu mill-Ministru Fenech.

Il-kontroversja tikber meta jirrizulta li tnejn minn dawk li kienu interessati jixtra l-Jerma huma l-istess zewg imprendituri li hadu lil Tonio Fenech Spanja b'jet privat biex jara loghba futbol.

In-negozju tal-Jerma ma sarx u b'hekk l-ahwa Montebello waqfu jhallsu l-kont tax-xoghol li kienu qed jaghmlu bi pjacir u li maz-zmien kien tela' ghal mas-70000 ewro.

Il-kumpanija Rainbow tqabbdet taghmel xoghol f'dar Hal-Balzan mill-kumpanija JPM. Waqt li kien ghaddej ix-xoghol darba fost l-ohrajn tfacca fuq il-post il-Ministru Tonio Fenech.

Meta s-sidien tar-Rainbow iccekkjaw mal-ahwa Montebello qalulhom dan il-kliem: "Ix-xoghol qed isir bi pjacir lil Tonio Fenech talli qed jghinna inbieghu l-Jerma'.

Tonio Fenech innifsu kien qal lill-kumpanija Rainbow biex ghal flus Montebello u meta Montebello ma hallsux Fenech qal lir-Rainbow “kellmu lil Montebello ghax wasalna”. B'referenza ghall-bejgh tal-Jerma.

Izda meta n-negozju tal-Jerma ma sarx, Montebello ma baqghux ihallsu lill-kumpanija Rainbow tax-xoghol li kien ghaddej fid-dartal-Ministru Tonio Fenech. Min-naha taghha, il-kumpanija Rainbow dahret ghal flus fuq il-Ministru Fenech peress li x-xoghol kien sar. Fenech hallas 20,000 ewro biss minn dak li kien dovut.

Mela l-ispejjez baqghu telghin, Tonio Fenech irrifjuta li jhallas l-ammont li kellu fuq l-istima u kecca lill-kumpanija Rainbow u minflok inqeda bil-kumpanija GAP.

Fenech nehha lill-kumpanija Rainbow wara li ma tawhx discount tajjed fuq il-kont taghhom u qed jinsisti li hallas kollox ghalkemm ghad baqa 20,000 li ma thallsux skond l-istima originali.

Dan il-kaz sar jaf bih ukoll l-Ufficju tal-Prim Ministru li min-naha tieghu qed jiddefendi lil Tonio Fenech fuq dan il-kaz ukoll.

(gurnalista)

Kmieni filghodu nxterdet l-ahbar dwar dan il-kaz gdid li jinvolvi Ministru Tonio Fenech.

Kaz li huwa mdawwar b'laqghat u pjaciri li jiswew eluf ta' ewro. Il-Ministru Fenech qed jipprova jilghabha li kollox business as usual. Filghodu kien intervistat mill-istazzjoni televiziv tal-Partit Nazzjonalista ghall-habta tal-ghaxra imbaghad irritorna fi hdan il-Ministeru biex ikompli jahdem fuq il-budget.

Madankollu, hassu skomdu jiffaccja lil One News dwar dan il-kaz mill-gdid qed jimbarazza lil dan il-Gvern.

(mistoqsija) Ministru, mistoqsija jekk joghgbok. X'tirrispondi ghall-allegazzjonijiet tal-Maltatoday?

(gurnalista)

Pjacir tat-tip li kien irrappurtat li jikser il-kodici ta' etika ghall-Ministri u s-Segretarji Parlamentari. B'hekk din tkun it-tieni darba li allegatament li l-Ministru Tonio Fenech kiser il-kodici ta' etika fi ftit xhur.

(studio newscaster)

U tard illejla il-Ministru Tonio Fenech rreagixxa ghal dan il-kaz permezz ta' stqarrija flimkien ma' martu.

Il-Ministru tal-Finanzi qal li hu hallas lill-kumpanija Rainbow contractors skont kif iccertifikat mill-perit izda lill-gazzetta Maltatoday qalilhom li hu kellu x jaqsam mal-kumpanija JPM u li l-kumpanija Rainbow kienet biss subcontractor taghha.

Dan ghalkemm fil-bidu tad-dikjarazzjoni tieghu mal-gurnal Fenech qal li hu m'ghandu x'jaqsam mal-kumpanija JPM.

Ir-reazzjoni tieghu kien fiha tal-anqas tliet kontradizzjonijiet.

Fi stqarrija li hareg llejla jevita li jsemmi l-ahwa Montebello izda magħha ppubblika ittra li fiha kkonferma li JPM kienu responsabbh mix- xoghijiet tad-dar tieghu.

Tonio Fenech caħad li qed jagħmilha ta' sensar u qed jhedded li jiehu passi legali.

Hu qed jiddeskrivi dal-kaz bhala kwstjoni personali li għandu ma kumpannija personali.

Jirrizulta illi Charles Magro qatt ma nieda proceduri kontra r-rikorrenti għall-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.

Ikkunsidrat

Jirrizulta, mill-eccezzjonijiet varji illi ressaq l-intimat in difiza tal-kaz tieghu, illi d-difiza tieghu hija principalment ibbazata fuq zewgt argumenti, ossija dik illi l-intimat kien qieghed jezercita d-dritt gurnalistiku tieghu u jikkummenta dwar fatti li kienu ġia 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 għandu jkun hemm ebda dubju illi, dak iz-zmien, ir-rikorrent kien persuna fil-politika u, għalhekk, pesuna pubblika u, bhala politiku, għandu 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 id-dritt tal-gurnalist illi jirrapporta dak li jidhirflu xieraq u korrett, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret referenza għall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, 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.

Fuq ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tghid is-segwenti:

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”.

L-istess intqal fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, fejn ziedet tghid:

.... the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

Tali principju reggha gie ripetut fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fuq meritu simili ghal dak in ezami, fejn intqal is-segwenti:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant 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.

Kif osservat aktyar il-fuq, l-intimat qajjem ukoll, fid-difiza tieghu, l-argument illi dak minnu hemm irrapurtat 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, jehntieg 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 preciz li jwegga' 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-artikolist tal-ahbar meritu tal-kawza odjerna, illi kien l-intimat Glenn Bedingfield, filwaqt illi jinsisti illi l-ahbar kienet ta' interess pubbliku, jiggustifka l-pubblikazzjoni fuq il-fatt illi kienet gia giet ippubblikata fil-Malta Today filwaqt illi jipprova jipprotegi d-drittijiet tieghu billi jghid illi l-gurnalista tal-One TV, Wendy Borg, marret tiffaccja lir-rikorrent b'domandi dakinhar stess filghodu, hekk kif harget l-istorja, izda r-rikorrent naqas milli jwieged.

Jirrizulta illi , fi kliem l-intimat stess (fol 136) "pjacir ta' sebghin elf Euro ghandu jitqies bhala ksur ta' l-etika ta' Ministru".

Jirrizulta illi, fost l-allegazzjonijiet illi saru fil-konfront tar-rikorrent fl-ahbar imxandar fuq in-news principali tal-One TV, l-intimat ghamel is-segwenti allegazzjonijiet fil-konfront tieghu:

- *Pjacir ta' 70000 Euro ghal Ministru Tonio Fenech minn kumpannija illi kien qed jghinha biex tbiegh il-lukanda Jerma*
- *Il-Ministru tal-Finanzi kien qed jipprova jghin lill-ahwa Montebello ibighu l-lukanda Jerma u ta' dan bhala pjacir kienu qed ihallsulu x-xogholijiet fid-dar il-gdida tieghu f Hal-Balzan*
- *Il-Ministru tal-Finanzi kien qed jipprova jghin lill-ahwa Montebello ibighu l-lukanda Jerma u ta' dan bhala pjacir kienu qed ihallsulu x-xogholijiet fid-dar il-gdida tieghu f Hal-Balzan*
- *Meta s-sidien tar-Rainbow iccekkjaw mal-ahwa Montebello qalulhom dan il-kliem: "Ix-xoghol qed isir bi pjacir lil Tonio Fenech talli qed jghinna inbieghu l-Jerma"*
- *Fenech hallas 20,000 ewro biss minn dak li kien dovut.*
- *Kaz li huwa mdawwar b'laqghat u pjaciri li jiswew eluf ta' ewro. Il-Ministru Fenech qed jipprova jilghabha li kollox business as usual*
- *Pjacir tat-tip li kien irrappurtat li jikser il-kodici ta' etika ghall-Ministri u s-Segretarji Parlamentari.*

Jirrizulta, madanakollu, illi mill-provi kollha prodotti mill-intimati, ebda minn dawna l-allegazzjonijiet ma gew ippruvat.

Jirrizulta, di fatti, illi, a differenza ta' dak illi qieghed jigi allegat minn Charles Magro, illi kellu kull interess illi joscura lir-rikorrent wara illi pprova jgieghlu jhallsu dak li ma kienx dovut lilu billi jmur jugzah 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), illi huwa kwazi l-istess ghal dak illi huwa kien hareg originalment lill-ahwa Montebello fis 26 ta' Frar 2009 (fol 20), 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 kwistjonjiet 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 dispost sahsanitru 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 lilu.

Ikkunsidrat

Dina il-Qorti tosserva illi hija sfortuna kbira illi l-mezzi tax-xandir ta' llum jaghtu spazju u importanza lill tali tip ta' nies illi huma disposti illi jhammgu u jattakkaw lill kull minn jaqbillhom unikament sabiex ikunu jistghu jiggwandanjaw aktar finanzjarjament, fatt illi, aktar ma jsir ta' spiss, aktar qieghed iqieghed il-media in generali f'posizzjoni illi l-kredibilita' taghha tigi mminata, li tkun ghajb kbir ghas-socjeta taghna u d-demokrazija in generali, stante illi pajjiz b'demokrazija b'sahhitha ghandha bzonn ukoll media b'sahhitha u kredibbli sabiex taghti vuci lill min ghandu bzonn filwaqt illi zzomm fil-kontroll lill min imexxi il-pajjiz, u dana bhala il '*public watch dog*' illi hija essenzjali ghad-demokrazija tas-socjeta taghna.

Kif qalet il-Qorti tal-Appell fil-kawza '**Franco Mercieca vs Roderick James Agius**' deciza fit 30 ta' Gunju 2017

Gurnalist serju li jrid jizvela affarijiet ta' interess pubbliku b'mod onest u genwin, mhu qatt gustifikat li jwaddabb it- tajn biex johloq storja. Gurnalist tal-affari tieghu jirricerka. Jekk f'dan il-kaz it- tabella nislitlu suspett li l-attur seta' kien ghadu qieghed

jipprattika l- professjoni minn gewwa dik il-clinic, il-gurnalizmu nvestigattiv u serju kien jitlob li jaghmel verifiki li facilment setghu saru mas-sid tal-clinic. Madankollu l-gazzetti tal-partiti politici ghandhom agenda politika. Dan iwassal sabiex hafna drabi l-prijorita tkun li jxandru ahbar diment li tkun tattakka lill- avversarju u mbaghad jaraw wara x'konsegwenzi tista' twassal ghalihom dik il-pubblikazzjoni. Pero dan it-tip ta' gurnalizmu tad-dilettanti jista' jappella biss lill-fanatiku u mhux ser isib protezzjoni minghand din il-qorti.

Finalment, 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.

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

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tilqa it-talbiet attrici, u ghalhekk, filwaqt illi

Tiddikjara il-kontenut tal-ahbar illi kien imxandar fuq l-ahbarjiet ta' One Tv tas 19.30pm tat 8 ta' Novembru 2009 u tal-11 ta' Novembru 2009 bl-isem ta' 'Pjacir ta' €70,000', bhala libelluz u malafamanti fil-konfront tar-rikorrenti.

Tikkundanna lill-intimat ihallas lir-rikorrenti bhala danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta' tlett elef Euro (€3,000).

Spejjez u Imghax fuq is-sorta mid-data tas-sentenza sad-data tal-pagament effettiv a karigu ta' l-intimat.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur