FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis disgha (9) ta' Novembru 2017

Rikors Numru 121/14 FDP

Mario Salerno

vs

Roderick Agius u Charles Muscat

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis-7 ta' April 2014 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu illi deher fil-harga ta' **Il-Mument** tal-Hadd 23 ta' Marzu 2014 intitolat '***Is-Sindku Laburista ta' San Pawl il-Bahar se jirrizenja fil-bidu ta' April***', 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 it-titolu "***Is-Sindku Laburista ta' San Pawl il-Bahar se jirrizenja fil-bidu ta' April***", bir-ritratt tar-rikorrent mal-gemb, jghid is-segwenti:

> *Is-Sindku Laburista ta' San Pawl il-Bahar, Mario Salerno ikkonferma ma' il-Mument li hu se jirriżenja mill-kariga ta' Sindku fl-ewwel ġimgħa ta' April. Mario Salerno l-bierah ħa sehem fil-laqgħa għas-Sindki li saret mill-Assoċjazzjoni tal-Kunsilli Lokali u matulha hu ħabbar ukoll li kien se jirriżenja minn Sindku imma se jkompli fil-ħidma tiegħu fil-Kunsill bħala Kunsillier.*
>
> *Hu qal li jrid li fl-aħħar sena ta' din il-leġislatura tal-Kunsill Lokali ta' San Pawl il-Baħar titrawwem persuna ġdida fil-kariga ta' Sindku biex tieħu l-esperjenza tant meħtieġa. Mario Salerno qal li bħala Kunsillier se jkollu iktar ħin jiltaqa' man-nies.*

Issa l-attenzjoni kollha għalhekk iddur fuq min se jieħu post Mario Salerno bħala Sindku f'San Pawl il-Baħar. Jidher li l-favorit hu l-Kunsillier Laburista Raymond Tabone, li ilu Kunsillier għal numru ta' snin imma qatt ma serva bħala Sindku.

Is-sorsi ta' il-Mument qalu li meta fl-aħħar elezzjoni, Mario Salerno, li mhux minn San Pawl, laħaq Sindku, Raymond Tabone xejn ma ħadha tajjeb. Tant li sa mill-ewwel laqgħa tal-Kunsill, deher fiċ-ċar li jeżisti diżgwid bejn Tabone u Salerno. Mario Salerno serva wkoll għal diversi snin bħala Sindku f'Ħal Kirkop.

B'hekk, ir-rizenja ta' Mario Salerno mistennija tkun it-tielet riżenja għall-Partit Laburista fil-Kunsill ta' San Pawl il-Baħar. Fis-sentejn li għaddew, minbarra Jason Camilleri li kien irriżenja wara li ħa tender mill-Kunsill, irriżenja wkoll Carmel Hili. Issa, ma' dawn, mistenni jingħaqad Mario Salerno li se jibqa Kunsillier.

Mario Salerno kien involut f'investigazzjoni tad-Dipartiment tal-Gvern Lokali. Dan b'rabta ma' hlas allegatament irregolari lill Mario Salerno li hatar lilu nnifsu ricerkatur fi progett tal-Kunsill ta' Hal Kirkop fejn kien Sindku, bl-isem ta' Litus Go finanzjat b'fondi Ewropej Hlasijiet li jaqbzu t-€18,000 bejn konsulenzi u spejjez ta' vjaggar u akkomodazzjoni.

Fost ohrajn, id-Dipartiment tal-Gvern Lokali kien qed jistaqsi b'liema kriterji Salerno u l-ekx Segretarju tal-Kunsill ta' Hal Kirkop Ranier Busuttil inhatru ricerkatur u manager rispettivament.

Mario Salerno kien qal li l-Kunsill kien infurmat b'dan il-progett u l-hatriet relatati, fil-laqgha tad-29 ta' Marzu 2010. Fil-minuti johrog car li dan ix-xoghol kien se jsir wara l-hin tax-xoghol tal-Kunsill – xi haga li kienet konfermata minn Salerno fl-istess ittra tieghu u ghaldaqstant ir-regolamenti tal-kuntratt jesigu li f'kuntratti li jaqzu €12,500 fil-valur, ikun hemm process ta' tendering b'mill-inqas tliet offerenti.

Diskrepanza ohra li kienet harget hi li filwaqt li l-Kunsill kien infurmat fil-laqgha tal-ahhar ta' Marzu 2010, l-istatements finanzjarji juri li l-pagamenti bdew ferm qabel, precizament mill-bidu tal-2010.

Salerno qatt ma cahad li kemm hu kif ukoll l-eks Segretarju Ezekuttiv Ranier Busuttil thallsu doppjament tal-istess spejjez ta' vvjaggar u akkomodazzjoni, kemm mill-fondi tal-progett allokati ghal dan il-ghan, kif ukoll mill-fondi tal-Kunsill Lokali ta'Hal Kirkop.

Sadattant minn stħarriġ tal-opinjoni pubblika dwar il-Kunsilli Lokali li sar f'Diċembru li għadda u li kien ippreżentat waqt il-laqgħa, jirriżulta li kien hemm tnaqqis qawwi fuq is-sodisfazzjon tan-nies dwar kif il-Kunsilli Lokali imexxu l-affarijiet.

Ħafna nies jaħsbu li l-Kunsilli Lokali m'għandhomx impatt qawwi fuq il-ħajja ta' kuljum u erba' minn kull għaxar persuni mhux sodisfatti mis-sistema tal-wardens. 35 fil-mija jaħsbu li l-Kunsilli Lokali jipprovdu servizz tajjeb skont il-valur tal-flus.

L-istħarriġ kien ippreżentat minn Marika Fsadni, Managing Director ta' M.Fsadni & Associates.

Rat id-difiza mqajjma mill-intimat u ppresentata fit-23 ta' April 2014 fejn, filwaqt illi sahaq illi l-artikolu lamentat ma kienx jirrappresenta fatti inveritjeri u ma kienx miktub bl-iskop li jtellef jew inaqqas ir-reputazzjoni tieghu, 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.

Semghet ix-xhieda tar-rikorrent **Mario Salerno** moghtija fit-22 ta' Settembru 2014 flimkien mad-dokumentazzjoni minnu ppresentati.

Semghet ix-xhieda ta' **Antonia Desira Demicoli**, segretarja tal-Kunsill Lokali Kirkop, moghtija fis 6 ta' Novembru 2014 u rat id-dokumentazzjoni minnha ppresentati.

Semghet ix-xhieda ta' **Ranier Busuttil**, eks-segretarju tal-Kunsill Lokali Kirkop, moghtija fis 6 ta' Novembru 2014 u rat id-dokumentazzjoni minnha ppresentati.

Semghet ix-xhieda ulterjuri ta' **Antonia Desira Demicoli**, segretarja tal-Kunsill Lokali Kirkop, moghtija fid 19 ta' Jannar 2015 u rat id-dokumentazzjoni minnha ppresentati.

Rat id-dokumentazzjoni ulterjuri esebita minn Antonia Desira Demicoli waqt il-mori tad-differiment, u ppresentati fis 27 ta' Jannar 2015.

Semghet ix-xhieda ulterjuri tar-rikorrent **Mario Salerno** moghtija fit-18 ta' Mejju 2015.

Rat l-affidavit ta' **Ranier Busuttil** ippresentat fit 30 ta' Settembru 2015 u dokumentazzjoni mieghu esebit.

Rat illi fit 3 ta' Dicembru 2015 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet il-kontro ezami ta' Mario Salerno illi saritlu fis 6 ta' Ottubru 2016.

Semghet il-kontro ezami ulterjuri ta' Mario Salerno illi saritlu fis 17 ta' Novembru 2016 u rat id-dokumentazzjoni esebita mix-xhud waqt tali kontro-ezami.

Semghet il-kontro ezami ta' Ranier Busuttil illi saret fis 27 ta' April 2017.

Semghet il-kontro ezami ulterjuri ta' Ranier Busuttil illi saret fil 15 ta' Gunju 2017 u rat id-dokumentazzjoni esebita mix-xhud waqt tali kontro ezami.

Rat illi fit 22 ta' Gunju 2017 il-partijiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fis-16 ta' Ottubru 2017, wara liema trattazzjoni il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta illi r-rikorrent, meta inkiteb l-artikolu meritu tal-kawza odjerna, ossija fit-23 ta' April 2014, kien Sindku tal-Kunsill Lokali San Pawl il-Bahar, minn liema kariga huwa kien alltwalment ser jirrizenja ftit zmien wara, kif del resto gara, u dana kif irrapputat korrettement fl-artikolu illi tieghu r-rikorrenti hassu malafamat.

Jirrizulta wkoll illi, ghal xi zmien, ir-rikorrent, ftit zmien qabel ma kien Sindku tal-Kunsill Lokali ta’ San Pawl il-Bahar, kien gia is-Sindku tal-Kunsill Lokali ta’ Kirkop.

Jirrizulta wkoll illi r-rikorrenti huwa President tal-Malta Organic Agriculatural Movement, kariga illi huwa jzomm fuq bazi personali.

Jirrizulta illi fit-28 ta’ Novembru 2008, ir-rikorrent ircieva email minghand certa Kyriaki Demetriou, illi huwa Project Co-ordinator tad-ditta Cipriotta Isotech Ltd Environmental Consultants fejn qaluli s-segwenti: (fol 24)

> *Dear Mario,*
>
> *How are you? Long long time to talk, but we do not forget you! Marios Adamides told me that you met during his trip to Malta. We are all fine, facing new challenges and preparing new funding proposals! Please have a look at the summary of a new proposal we are preparing under the Leonardo da Vinci Programme and tell us if you find it interesting. We would like to involve from Malta, two project-partners: one municipality or community and one Non Governmental organization dealing with environment/coasts. Can you help us? We are really looking forward to hearing from you and work together again!*

Jirrizulta illi dakinhar stess, ir-rikorrent kitiblu lura u qallu s-segwenti:

> *Dear Kyriaki,*
>
> *It is pleasant to hear from you. I will work straight ahead on your proposal as early as next Monday. I will go through the project.*

Jirrizulta illi l-4 ta’ Dicembru 2008 ir-rikorrenti reggha kiteb lill Demetriou u qallu dan li gej: (fol 25)

> *Dear Kyriaki,*
>
> *Thanks for the invitation. We have interest to participate in this programme.*
> *What do you think if we involve the Kirkop Local Council and Malta Organic Agriculature Movement?*

Jirrizulta illi dakinhar stess, Demetriou irrispondieh billi qallu li gej: (fol 26)

> *Thank you for the reply. I think the best will be to proceed only with Kirkop Local Council as partner. At a later stage and if the project gets approval the Council could disseminate the results of the project to several NGOs in Malta. Will you be the contact on behalf of the Council? Please send us a half page description of the Kinkop Local Council and a website if exists.*

Jirrizulta illi r-rikorrent dakinhar kiteb lill Ranien Busuttil, is-Segretarju Ezekuttiv tal-Kunsill, fejn qallu s-segwenti:

> *Ranier,*
>
> *Can you please send a short description – half page – of our Local Council and its website to Isotech so that Kyriaki would work straight on the Leonardo propject?*

Jirrizulta illi f'data mhux specifikata fis-sena 2009, ir-rikorrent flimkien ma' Ranier Busuttil ghan-nom tal-Kunsill Lokali Kirkop, dahal fi ftehim mas-socjeta Isotech Limited sabiex il-Kunsill Lokali Kirkop tkun partner fuq progett intitolat "**Training Mediterranean Local Authorities and Civil Organizations on Integrated Coastal Zone Management and reaction to the Impacts on Climate Changes**" – vide fol 361 tergo.

Jirrizulta illi f'tali ftehim (fol 373 etc), hemm stabbilit is-segwenti:

> ***Duration***
>
> *The action and the period of eligibility of costs shall begin on 01-12-2009 (the starting date of action) and shall end on 31-05-2012 (the closing day of action)*
>
> ….
>
> ***Financing and Payment arrangements***
>
> …
>
> *The total eligible costs for the action for partner P6 (Kunsill Lokali Kirkop) are estimated at 55855 euro.*
>
> …
>
> *The total grant amount/contribution by the Agency for partner P6 is 41891 euro, which is equivalent to the 75% of the estimated total eligible cost incurred by P6*
>
> *Partner's contribution is the 25% of the amount mentioned in 3.3*
>
> *Payments shall be made to the partner's bank account*

Jirrizulta illi l-ewwel darba illi dana il-Progett gie diskuss mill-Kunsill Lokali Kirkop kien fil laqgha tad-29 ta' Marzu 2010 fejn, fil-minuti, jintqal is-segwenti: (fol 39-40)

> *10. Il Progett LitusGo*
>
> *Il progett tal-LitusGo li hu progett li jaqa' taht il-programm tal-Leonardo da Vinci, kien tniedi fuq l-iniziattiva tal-Isotech Limited li hija kumpanija privata f'Nicosia li toffri konsulenz fuq, manigg ambientali li fosthom hemm iz-zona tal-kosta tal-gzejjer.*
>
> *Bis-sabha tal-hbiberija li ghandu mad-direttur tal-kumpanija, gie mistieden biex jaghti sehem tekniku u logistiku f'dan il-programm. Is-sindku kien hadem matul dawn l-ahhar ghaxar snin ha din il-kumpanija fuq il-biedja organika.*
>
> *Minn dan il-programm, il-poplu Malti kien ibbenefika bil-kbir ghaliex anke ahna bhala kunsili konna organizzajna korsijiet fuq il-biedja organika. Fuq l-istess stil ta' tmexxija, Mario Salerno qal li kien se jmexxi progett li jirrigwardja Integrated Coastline Zone Management. Bis-sahha ta dan il progett, is-Sindku jittama' li jinvolvi l-Kunsilli lokali*

kollha biex dawn ikollhom gharfien biex imexxu r-risorzi naturali bhall-ilma, hamrija, xtutna etc etc.

Is-Sindku qal li fis-snin li ghaddew, hu kien involva lil xi Ghaqdiet mhux governattivi, imma issa dan il-progett jinrekjedi inizzjattivi tal-privat u tal-NGOs. Fejn jidhol il-privat, is-Sindku se jinvolvi persuni biex jaghtu s sehem taghhom jekk jaccettaw l-allowances li huma stipulati f'dan il-programm.

Ma persuni barranin esperti identifikajt ukoll zewg persuni li jiena ghandi bzonn li jkunu kapaci fil-qasam tal-kompjuter u qabel dawn il persuni ninvolvihom, xtaq is sindku jinforma lil kunsilliera jekk ghandhomx xi diffikulta fuq zewg persuni li jahdmu fil-kunsill li jistghu jaghmlu xoghol fuq dan il progett wara l-hin taghhom.

Is-Sindku qal li mieghu jixtieq li jkun hemm Antonia u Ranier, li jistghu jaghtu kontribut ta' tlett sieghat fil-gimgha u l-vantagg li jkunu dawn involuti, jkun li bis-sahha taghom dawn jistghu jikkordinaw xi attivitajiet li ghandhom hands on fuqhom u li jista' jibbenefika wkoll il-kunsill lokali. Dan sehh issa billi l-ufficju tal-kunsill ka minn tlett laptops u projector.

Rose Roberts stagsiet jekk ix-xoghol li jaghmlu Antonia u Ranier jitwettaq fil-hin tal ufficcju, hija toggezjona. ghal dan imma jekk dawn jaghmlu u jahdmu fuq dan il progett wara l-hin tal-ufficcju hija ma ghandha xejn x' toggezzjona, anzi qalet Rose li hija tippreferi lijkun hemm huma milli jkunu involuti persuni strangiera.

Joe Carbone qal li minn dawn il progetti, deijem hemm x' titghallem u x'tibennefika. Hu gal li jibqa' l-fatt li kunsill jibennefika minn xi rizorsi u minn xi taghlim li fl-ahhar ihalli impatt posittiv fuq ir-residenti taghna.

Mario Salerno qal li l-hsieb ahhari ta' dan il progett LitusGo, hu li nkumu kapaci nohorgu zewg kotba teknici bil-Malti li jghallmu kemm lill-ghalliema, lill-istudenti, lill-kunsiliera, lill-NGOs u lill-poplu liema taghlim hu innovativ fuq il-manigi ta' gzeijer zghar bhalma hija Malta, l- Gzeijer Aegeni u Cipru. Is-sabih ikun li mhux biss il-Kunsill Lokali jibbenefika minna risorzi tangibbli imma wkoll li jghaddi z-zmien, u Hal Kirkop ikun imsemmi li kien fost l-ewwel lokalitajiet fl-ewropa li ha iniziattiva biex jindirizza l-mani tar-risorzi naturali fi sfond tal-bidla fil-klima.

Jirrizulta illi fil-31 ta' Marzu 2010 hallas allowance lill Ranier Busuttil u Antonia Demicoli ghall-periodu illi jkopri Dicembru 2009 sa Marzu 2010. (fol 383)

Jirrizulta illi fit-18 ta' Dicembru 2012 sar l-Approval of Final Report and Notification of Final Payment mill Education, Audiovisual and Culture Executive Agency fejn intqal is-segwenti fl-Overall Evaluation: (fol 382)

Overall comment: the project was run in a smooth way without major delays and has produced the foreseen outcomes which are in accordance with the original aims and objectives. Outcomes are adapted to the needs of the target groups, are good quality and easy to understand. All aspects of the project have been performed without major weaknesses.

Strong points: The partnership has worked together in a stable and reliable way so that the planned outcomes could produced as foreseen. Where deviations from original plans have been detected, these are well argued and make sense. Dissemination activities have been manifold and the different groups of stakeholders in the MED partner countries have been identified (see lists provided). These stakeholders have been contacted by the consortium actively and therefore a certain sustainability of the outcomes is expected. Additional activities, which have not been foreseen in the original application, have been integrated into the work plan according to actual detected needs and have been realised.

Weak points: The financial management is not always fully clear (e.g. calculation of several budget positions; shifts in the budget, which are not officially amended but still possible according to the financial rules). The Maltese partner has not been always very active in the project and had a lower commitment to the project than the other partners, but was still reliable. Exploitation activities beyond the lifetime of the project and beyond the partner countries are only in a relatively vague manner, not providing details on precise plans for specific actions

Jirrizulta illi f'ittra mibghuta minn Ranier Busuttil bhala Manager tal-progett lis-Sindku ta' dak iz-zmien tal-Kunsill Lokali Kirkop, liema ittra inbghatet fis 27 ta' Frar 2013 meta Busuttil ma kienx ghadu Segretarju Ezekuttiv, huwa kkonferma s-segwenti: (fol 300-301)

The staff allowance costs were as follows:

Mario Salerno	*- reseracher/trainer/teacher*	-	*€10,647*
Ranier Busuttil	*- Manager*	-	*€9,675*
Antonia Desira Demicoli	*- Administrator*	-	*€7,312.50*

Subsistence (per diem) allowance for overseas were as follows:

Mario Salerno	-	*€1,613*
Ranier Busuttil	-	*€1,613*

Jirrizulta, mix-xhieda ta' Ranier Busuttil, illi l-pagamenti kollha illi saru kienu attwalment saru mill-Kunsill Lokali Kirkop, illi kien qieghed jircievi l-fondi ghal dana il-progett, u minn tali fondi saru l-hlasijiet kollha hawn fuq imsemmija. (fol 410).

Jirrizulta wkoll illi, mument minnhom, meta kienu qed isiru l-kontijiet tal-kumpannija Cipriotta, irrizulta illi Mario Salerno u Ranier Busuttil thallsu madwar elf Euro aktar kull wiehed minn dak dovut lilhom (fol 402) u, bhala rizultat, hekk kif sar il-'*cut off*' u allura inghadda l-bilanc dovut lill-Kunsill Lokali ta' l-ispejjez inkorsi mill-Kunsill, tnaqqssulhom l-ammont ta' madwar elfejn Euro illi thallsu zejjed lill Salerno u Busuttil.

Jirrizulta illi skond ix-xhieda ta' Ranier Busuttil (fol 407), kif ukoll dik tar-rikorrenti, il-Kunsill ibbenefika minn dana il-progett kollu billi zamm it-tlett laptops illi nxtraw ghal dana il-progett kif ukol il-projector li nxtara wkoll u huwa l-propretarju tal-'*copyright*' tal-ktieb illi gie ppubblikat bhala parti minn tali progett.

Ikkunsidrat

Jirrizulta, fix-xhieda estensiva moghtija mir-rikorrent Mario Salerno, illi l-parti tal-artikolu illi dwarhu huwa hassu malafamat kien dak illi jirrigwarda r-rappurtagg li sar fih in konnessjoni mal-progett tal-Litus Go finanzjat minn fondi tal-Ewropa u li fih kien involut il-Kunsill Lokali ta' Kirkop, illi tieghu huwa kien is-Sindku.

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*'.

Huwa fatt mhux kontestat illi gurnalist ghandu dritt,jekk mhux obbligu, illi jirrapporta dak li jidhirlu xieraq u korrett, u ghal dan il-ghan, il-Qorti taghmel referenza ghall principji stabbiliti fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012. Il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, f'din il-kawza, ghamlet 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:

(α) 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-segwenti 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, il-Qorti tghaddi biex taghmel is-segwenti osservazzjonijiet:

- ir-rikorrent jikkontendi illi hija malafamanti l-allegazzjoni illi huwa "*hatar lilu nniffsu ricerkatur fi progett tal-Kunsill ta' Hal-Kirkop*" – Il-Qorti hawnhekk taghmel is-segwenti osservazzjonijiet:

    - Illi hareg car mill-korrispondenza vasta esebita mir-rikorrent stess, li r-rikorrent kien involut fil-progett kollu minn qabel ma' attwalment il-progett gie kkoncepit, tant hu hekk illi kienet il-kumpannija Cipriotta Isotech Limited Environmental Consultants illi kkomunikat mieghu biex tara jekk hu kienx interessat fil progett u kien hu ppropona li jdahhal lill-Kunsill Lokali ta' Kirkop, haga li kienet essenzjali sabiex tali progett ikun possibbli, ghax minghajr il-Kunsill Lokali il-progett qatt ma kien jara d-dawl;

    - Illi hareg car illi kieku ma kienx hemm il-Kunsill Lokali ta' Kirkop imdahhal fil-progett, hemm probabbilta' kbira illi r-rikorrent ma kienx seta' jkun involut fil-progett u ir-rikorrent ghalhekk ma kienx ikun ser jibbenefika mill-pagamenti kollha illi sarulu li kienu jammontaw ghal ftit anqas minn tlettax-il elf Euro b'kollox.

    - Illi hareg car li kien ir-rikorrent, bhala leader tal-progett lokali, li ghazel kemm illi jkun il-Leader taghha kif ukoll min ikun involut fil-progett, fosthom Ranier Busuttil u Antonia Desira Demicoli, liema ghazla jidher illi huwa ghamel maghruf lill-Kunsill Lokali Kirkop biss fid-29 ta' Marzu 2010, meta l-progett kien gia inbeda w il-ftehim mas-socjeta Isotech

Limited gia iffirmat u, sahansitra, ix-xoghol kien gia inbeda, tant hu hekk illi Busuttil u Desira Demicoli, jumejn wara illi r-rikorrent talab l-approvazzjoni tal-Kunsill sabiex dawn it-tnejn jassistuh fil-progett, thallsu ghas-servizzi taghom minn erbgha xhur qabel, ossija Dicembru 2009 sa Maru 2010. Presumibbilment, ir-rikorrenti ukoll thallas minn dakinhar.

- Illi huwa car hafna li r-rikorrent kien hu li hatar llu nniffsu bhala "Researcher/Trainer/Teacher" f'dana il-progett peress illi huwa gharraf lill-Kunsill li kien ser imexxi l-progett hu, u ghalhekk ma hemm assolutment xejn inveritjer f'tali asserzjoni da' parte tal-artikolist.

Ghalhekk jidher illi ma jista jkun hemm xejn malafamanti f'dak illi ntqal.

- ir-rikorrenti jikkontendi illi huwa malafamanti illi jinghad li l-hlasijiet li sarulu "*jaqbzu t-€18,000 bejn konsulenzi u spejjez ta' vjaggar u akkomodazzjoni*": – Il-Qorti hawnhekk taghmel is-segwenti osservazzjonijiet:

- Illi jirrizulta li, rizultat tal-hatra tieghu bhala "*researcher/trainer/teacher*", huwa thallas is-somma ta' €10,647 ghas-servizzi tieghu rezi ghal dana il-progett.
- Illi jirrizulta wkoll illi huwa thallas ukoll is-somma ta' €1,613 bhala *per diem allowance* ghas-safar kollu illi huwa ghamel rizultat ta' dana il-progett.
- Illi jirrizulta, finalment, illi jidher li r-rikorrent thallas ukoll somma ohra ta' madwar elf euro ohra, skond Busuttil, li eventwalment kellha titnaqqas mill-ammont li kellu jithallas lill-Kunsill Lokali, peress illi tali flejjes ma kellux id-dritt illi jitlobhom izda xorta gew lilu mhallsa.
- Illi ghalhekk, minkejja illi huwa minnu illi s-somma ta' tmintax-il elf Euro (€18,000) msemmija fl-artikolu ma tirrizultax bil-preciz, jirrizulta car izda illi r-rikorrent thallas ta' mill-anqas madwar tlettax-il elf (€13,000)ghal progett illi huwa gab personalment u li ma kien qatt ikun jista jaghmel kieku ma dahhalx il-Kunsill Lokali Kirkop bhala partner, liema Kunsill huwa kien Sindku tieghu dak iz-zmien.
- Illi ghalhekk, jirrizulta sostanzjalment korrett illi r-rikorrent dahhal ammont ta' flus konsiderevoli rizultat ta' progett li beda hu bis-sahha tal-posizzjoni tieghu ta' Sindku ta' Kirkop.

Ghalhekk jidher illi ma jista jkun hemm xejn malafamanti f'dak illi ntqal.

- ir-rikorrent qieghed jikkunsidra bhala malafamanti l-fatt li l-artikolist jallega illi l-kuntratt kellu jinghata bi process ta' tendering u mhux b'direct order, kif ghamel ir-rikorrenti. – Il-Qorti hawnhekk taghmel is-segwenti osservazzjonijiet:

- Jirrizulta illi bhala rizultat tal-progett imniedi mir-rikorrent, ibbenefikaw principalment ir-rikorrent, Ranier Busuttil u Antonia Desira Demicoli. Dana qieghed jinghad ghax Mario Salerno, bhala "*researcher/trainer/teacher*", thallas is-somma ta' €10,647, Ranier Busuttil, bhala Manager thallas is-somma ta' €9,675 u Antonia Desira Demicoli, bhala Administrator thallset is-somma ta' €7,312.50, li flimkien jaghmlu total ta' €26,734.50. Apparti minn dawn, jidher li Salerno u Busuttil ibbenefikaw ukoll minn hlas ta' €1,613 kull wiehed, bir-rizultat illi t-total tal-progett jitla ghal €30,860, li kollha inghataw b'direct order u thallsu

direttament minn Ranier Busuttil illi kien, dak iz-zmien is-Segretarju Ezekuttiv tal-Kunsill Lokali Kirkop, illi tieghu ir-rikorrent kien is-Sindku.

- Jirrizulta wkoll illi l-valur intier tal-kuntratt iffirmat bejn ir-rikorrent flimkien ma' Ranier Busuttil u is-socjeta Isotech Limited kien fl-ammont ta' €55,855, li minnhom sas-somma ta' €41,891 setghu jithallsu mill-kumpannija Isotech Limited filwaqt illi l-bilanc ta' €13,964 kellhom jithallas direttament mill-Kunsill Lokali Kirkop.

Ghalhekk jidher illi ma jista jkun hemm xejn malafamanti f'dak illi ntqal.

- ir-rikorrent qieghed jikkonsidra bhala malafamanti l-allegazzjoni illi, ghalkemm il-Kunsill Lokali gie mgharraf bil-progett f'Marzu 2010, attwalment il-pagamenti kienu saru qabel, kif ukoll illi saru pagamenti doppji ghall vjaggar u akkomodazzjoni. Il-Qorti hawnhekk taghmel is-segwenti osservazzjonijiet:

- Jirrizulta ben ippruvat illi, ghalkemm il-progett ingieb a konoxxjenza tal-Kunsill u, possibbilment, gie approvat (peress illi ma jidher ebda approvazzjoni miktuba fil-minuti) fid-29 ta' Marzu 2010, il-ftehim tal progett gie iffirmat fis-sena 2009, ghalkemm ma jidhirx car meta attwalment gie ffirmat il-ftehim peress illi d-dokumenti kollha ppresentati mir-rikorrentu juru illi ma kienx hemm data fuq il-ftehim u il-progett inniffsu kellu jibda fl-1 ta' Dicembru 2009 u di fatti, jidher car li fit-30 ta'Marzu 2010 saru pagamenti ghall servizzi rezi minn Dicembru 2009 'l quddiem.

- Jirrizulta ben ippruvat ukoll illi lir-rikorrent u lill-Busuttil sarulhom pagamenti zejda ghal akkomodazzjoni u vjaggar li huma ghamlu rizultat ta' dana il-progett, kif ammetta Ranier Busuttil illi kien responsabbli mill-aspett finanzjarju tal-progett, fost affarjiet ohra, ghal liema hlasijiet la Busuttil u lanqas ir-rikorrent ma qatt qalu li rrifondew, izda sahqu biss illi tnaqqsu mill-flejjes illi kienu ghadhom dovuti lill-Kunsill Lokali meta saru il-konteggi finali, liema konteggi finali saru meta ir-rikorrent kien gia spicca minn Sindku u Busuttil kien gia spicca minn Segretarju Ezekuttiv.

Ghalhekk jidher illi ma jista jkun hemm xejn malafamanti f'dak illi ntqal.

Il-Qorti, finalment, thoss illi ghandha taghmel is-segwenti osservazzjonjiet ulterjuri:

Il-progett illi fih ir-rikorrent dahhal lill-Kunsill Lokali Kirkop kien jismu **Training Mediterranean Local Authorities and Civil Organizations on Integrated Coastal Zone Management and reaction to the Impacts on Climate Changes**, indikazzjoni cara illi kienet ghalhekk tirrigwarda progetti in konnessjoni tal-immaniggjar tal-kosta mal-bahar.

Il-Qorti ma tistax ma tosservax illi l-Kunsill Lokali Kirkop certament ma ghandu ebda parti mill-konfini tieghu mal-kosta tal-bahar, u ghalhekk huwa difficili jimmagina x'tip ta' beneficcju seta qatt jiehu minn tali progett il-Kunsill Lokali Kirkop u c-cittadini tal-Kirkop.

Il-Qorti tosserva illi r-rikorrent jikkontendi li l-Kunsill attwalment ibbenefika minn tlett laptops u overhead projector, lkoll uzati ghal tlett snin, kif ukoll *copyright* fuq ktieb illi qatt ma gie ppresentat quddiem dina l-Qorti.

Madanakollu, ghalkemm valur finanzjarju ta' talibeneficcji ma giet moghti, il-Qorti tosserva li jidher car illi r-rikorrent, flimkien ma' Ranier Busuttil u Antonia Desira Demicoli ibbenefikaw ferm

aktar minn dak illi seta ibbenefika il-Kunsill Lokali Kirkop, peress illi flimkien dahhlu €30,860 fi pagamenti lilhom, liema pagamenti huma certament ma kienux ser jircievu kieku ma kien ghal fatt illi ir-rikorrent involva l-Kunsill Lokali Kirkop f'progett ghall-immanigjar tal-kosta, liema kosta il-Kunsill Lokali Kirkop ma kellux.

Il-Qorti, finalment, tosserva illi fil-minuti tad-29 ta' Marzu 2010, ir-rikorrent jiggustifika tali progett billi jghid illi dwar tali progett*, "il-poplu Malti kien ibennefika bil-kbir"*, izda l-Qorti ma tistax ma tosservax illi jidher li bbenefikaw ferm aktar ir-rikorrent w il-persuni illi huwa qabbad mieghu, milli c-cittadini ta' Kirkop, illi attwalment eleggew lir-rikorrent sabiex jagixxi ghall-ahjar interessi taghhom, u dana peress illi r-rikorrenti spicca dahhal il-Kunsill Lokali Kirkop f'progett illi il-beneficjarju principali tieghu ma kienx il-poplu ta' Hal Kirkop izda kien ir-rikorrenti u n-nies minnu mqabbda.

Ikkunsidrat

Il-gurnalizmu serju u investigattiv huwa importanti hafna ghal socjeta demokratika bhalma hija dik Maltija, u dana sabiex tali azzjonijiet ta' persuni li jkunu inghataw il-fiducja tal-poplu ghat-tmexxija taghha, jigu analizzati u, bhal fil-kaz odjern, migjuba fil-pubbliku, ghax il-poplu ghandu d-dritt ikun jaf dak illi attwalment jkunu qed jaghmlu il-persuni illi jghidu li qed jagixxu fl-interess tac-cittadin izda illi eventwalment qed jistghanew huma minn fuq dahar ic-cittadin taht il-pretest li qed jagixxu fl-interess tal-poplu.

Ic-cittadin ghandu id-dritt li jesigi minghand il-gurnalisti illi huma jaghmlu stharrig serju u investigattiv u il-gurnalisti ghandhom id-dritt illi jesigu minghand il-Qrati il-protezzjoni lilhom spettanti meta huma, b'mod korrett u leali, jkunu qed jikxfu u jippubblikaw tali tip ta' stejjer, u dawna l-Qrati ghandhom l-obbligu li dejjem jassikuraw illi tali drittijet jigu assidwament protetti u mhaddna peress illi minghajr tali tip ta' rapurtagg u informazzjoni mghoddija lic-cittadin, l-istess cittadin ma jkunx f'pusizzjoni illi jaghraf l-azzjonijiet tal-persuni minnhom fdati bil-vot taghhom u l-bazi tad-demokrazijia li fuqha hija mibnija s-socjeta Maltija tigi serjament imminata.

Konkluzjoni

Il-Qorti ghalhekk,

Wara illi rat il-provi kollha prodotti quddiemha, u 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-intimati, u ghalhekk

Tichad it-talbiet attrici.

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

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur