



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn tmintax (18) ta' Gunju 2018

Rikors Numru 73/16 FDP

**Dr Konrad Mizzi**  
(ID 521577M)

vs

**Helena Grech**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis 7 ta' April 2016 fejn ir-rikorrent talab lill-Qorti is-segwenti:

*(1) Prevoja dikjarazzjoni illi inti responsabbli ta' malafama fil-konfront tal-attur b'artikolu intestat 'Konrad Mizzi did not divulge he was a politician – cofounder of Mossak Fonseca' liema artikolu gie ppubblikat fl-ewwel u hames faccata tal-harga tas-7 ta' April 2016 tal-gurnal The Malta Independent, stante illi l-allegazzjonijiet li ghamilt fl-imsemmi artikolu huwa malafamanti, libelluzi u jirraprezentaw fatti inveritjeri u ghalhekk intizi sabiex ittelfu jew inaqqsu r-reputazzjoni ta' l-istess attur, kif jirrizulta ahjar waqt it-trattazzjoni tal-kawza; thallas lill-attur dik is-somma li tigilikwidata minn din l-Onorabbli Qorti ai termini tal-artikolu 28 tal-Kap 248.*

Rat l-artikolu meritu tal-kawza odjerna, illi deher fil-faccata tal-gazzetta The Malta Independent tal-Hamis 7 ta' April 2016 u kompla fuq pagna numru 5, intitolat "**Konrad Mizzi did not divulge he was a politician – cofounder of Mossak Fonseca**", u li kien jghid is-segwenti:

*Energy Minister Konrad Mizzi did not divulge that he was a politician when he solicited the services of Panamanian corporate service providers Mossack Fonseca, co-founder Ramon Fonseca Mora said in an interview with La Estrella.*

*The co-founder of the law firm told the Panamanian news outlet in an interview on 14 March: “What escaped us is that this man is a politician and we do not deal with politicians anymore”. (sottolinjar tar-rikorrent)*

*Mr Fonseca Mora is no stranger to making international headlines because of corruption. He was once filled the role of minister-counselor to Panama President Juan Carlos Varela, but had to step down because of allegations that his company’s Brazilian office was involved in an on-going bribery and money-laundering scandal centred around Brazil’s state-controlled oil company Petrobras.*

*Dr Mizzi and the Prime Minister’s Chief of Staff Keith Schembri were discovered to concurrently hold trusts registered in New Zealand which own a company registered in Panama each. The information was released on 22 February by the Malta Independent columnist Daphne Caruana Galizia.*

*In the interview Mr Fonseca Mora, insisted that “there is nothing wrong here” and that his company simply carried out the services requested by their client. The assertion that Mossack Fonseca was unaware of Dr Mizzi’s status as a PEP (Politically Exposed Person) comes in an era where a quick internet search would reveal all instantly. It also casts doubts on the due diligence process the corporate service provider carries out on its clients, especially when a bank in the very same country at the heart of this scandal (Panama) had refused to open up bank accounts for Dr Mizzi and Mr Schembri because of their status as PEPs.*

*Dr Mizzi and Mr Schembri said that they opened up their offshore financial structures upon the advice from the Maltese franchise of Mossack Fonseca, which is fully owned by Brian Tonna of Nexia BT. The company in Panama was acquired by Dr Mizzi in 2013, when he had already been appointed as a Minister.*

*Dr Mizzi had said that neither the Panamanian company (Hearnville Inc) nor the trust (Rotura) hold any assets, liabilities or bank accounts. He also said that the company has never traded.*

*Seven weeks after this initial discovery, the scandal dubbed Panama Papers came to light. A trove of documents from Mossack Fonseca leaked to a German newsroom 11.5 million documents which expose a vast network of how dictators, criminals, politicians and celebrities conceal their wealth.*

*The documents were analysed by the International Consortium of Investigative Journalists, together with German newsroom Süddeutsche Zeitung and over 100 more news outlets. They have exposed 140 Politically Exposed Persons (PEPs) and how the powerful purchase secrecy as a commodity through the assistance of corporate service providers such as Mossack Fonseca.*

*Whether Dr Mizzi withheld such information from the corporate service provider remains to be seen. Whether the Maltese branch of Mossack Fonseca withheld this information from their base in Panama also remains to be seen. (sottolinjar tar-rikorrent)*

*Companies such as Mossack Fonseca sell secrecy to prominent figures in order for these people to conceal their wealth. When listing shareholders and directors,*

*companies such as this one offer up the names of their own people to be listed, in order for the ultimate owner or the ultimate beneficiary to be concealed.*

*While no proof of corruption has of yet been found with regard to Dr Mizzi, ethical behaviour and political accountability have been stressed by the public. The fact is that he is the only Minister in the EU who was mentioned negatively by various international newsrooms, that people close to infamous dictators have been exposed within the same scandal, that the Prime Minister for Iceland has resigned over the matter, and that calls for resignation and protests against the Prime Minister of Ukraine. Dr Mizzi is the only active Minister from an EU Member State to be mentioned in Panama Papers.*

*If Mr Mora is correct in saying that the company was unaware of his position as Minister, then this exposes just how careless the corporate service provider is. If Dr Mizzi failed to bring this to the attention of the relevant personnel within the company, then it is another story entirely which puts more pressure on the Prime Minister who vouched in Parliament that if Dr. Mizzi was caught lying he wouldn't survive one minute in his cabinet. So far the Prime Minister continues to back his most prominent Minister, against the advice of his senior members of cabinet.* (sottolinjar tar-rikorrent)

Rat l-eccezzjonijiet ta' l-intimata Helena Grech ippresentati fil-25 ta' April 2016 fejn laqghet ghal dak mitlub billi ressaqet is-segwenti eccezzjonijiet:

1. *Li l-kontenut tal-artikolu lamentat mhux libelluz u/jew malafamanti fil-konfront tar-rikorrenti u ma jirraprezentax fatti inveritjeti u ghalhekk ma kienx intiz sabiex itellef jew inaqas ir-reputazzjoni tar-rikorrent.*

2. *Illi l-kontenut tal-artikolu lamentat jikkonsisti biss f'fatti verifikabbli u kummenti dwar kwistjonijiet fl-interess pubbliku li ghalhekk jikkonsistu f'fair comment, kritika accettabbli f'socjeta demokratika u ezercizzju tal-liberta' tal-espressjoni sancita, inter alia, mill-Kostitutzzjoni ta' Malta u l-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem.*

3. *Salv eccezzjonijiet ulterjuri.*

Semghet ix-xhieda ta' **Dr Konrad Mizzi** moghtija fis-6 ta' Ottubru 2016 u rat id-dokumentazzjoni minnu ppresentati ossija Stqarrija Pubblika mahruga mid-Dipartiment tal-Infurmazzjoni fis-7 ta' April 2016 (fol 18), l-Artikolu ippubblikat fuq il-harga ta' *La Estrella de Panama* bil-lingwa Spanjola (fol 19) u traduzzjoni ta' parti mill-artikolu. (fol 21).

Semghet ix-xhieda in subizzjoni ta' l-intimata **Helena Grech** moghtija fit-12 ta' Dicembru 2016.

Rat it-traduzzjoni bil-lingwa Ingliza tal-artikolu kollu ippubblikat fuq il-harga ta' *La Estrella de Panama* bil-lingwa Spanjola, ippresentat fit-2 ta' Meju 2017.

Semghet ix-xhieda ulterjuri in subizzjoni ta' l-intimata **Helena Grech** moghtija fis-7 ta' Lulju 2017 u rat id-dokumentazzjoni minnha ppresentati ossija traduzzjonijiet lilha moghtija tal-partijiet relevanti tal-artikolu kif ukoll abbozz tal-artikolu minnha redatt u mibghut lill-edituri u eventwalment mibdul mill-istess edituri kif eventwalment ippubblikat.

Semghet ix-xhieda ta' **Dr Konrad Mizzi** moghtija fil-15 ta' Jannar 2018 u rat id-dokumentazzjoni minnu ppresentati ossija *Due Diligence Questionnaire* datata 16 ta' Gunju 2015 (fol 65 sa 75).

Rat illi fil-15 ta' Jannar 2018 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Helena Grech** moghtija fit-22 ta' Marzu 2018 u rat id-dokumentazzjoni minnha ppresentati, ossija artikoli ohra ppubblikati fil-gazzetta the Malta Independent, bil-pubblikazzjoni tad-dritt ta' risposta f'tali artikoli, liema artikoli, izda, ma ghandhom ebda relevanza ghal kaz odjern.

Rat illi fit-22 ta' Marzi 2018 l-intimata iddikjarat illi ma kellhiex aktar provi x'tippresenta w ghalhekk il-kawza setghet tithalla ghas-sottomissjonijiet finali.

Semghet is-sottomissjonijiet finali ta' l-abbli difensuri taz-zewgt partijiet illi saret fis-7 ta' Mejju 2018, wara liema data il-kawza giet differita ghas-sentenza ghallum.

## Ikkunsidrat

Jirrizulta illi fis-7 ta' April 2016, il-gazzetta *The Malta Independent* ippubblikat storja fejn irppurtat dwar storja illi kienet giet ippubblikata fil-gazzetta tal-Panama bl-isem ta' *La Estrella de Panama* fl-14 ta' Marzu 2016 illi kienet intervista ta' Ramon Fonseca Mora, wiehed mis-sidien tad-ditta ta' avukati Mossack Fonseca illi kienu involuti fl-hekk imsejjah '*Panama Papers*'.

Jirrizulta illi l-artikolu meritu tal-kawza odjerna, gia fuq rappurtat, kellu bhala titolu principali, b'tipi kbar, u fuq il-faccata tal-gazzetta, is-segwent: "***Konrad Mizzi did not divulge he was a politician – cofounder of Mossack Fonseca***".

Jirrizulta illi imbghad, fl-ewwel paragrafu, l-artikolu ikompli jghid dan:

*Energy Minister Konrad Mizzi did not divulge that he was a politician when he solicited the services of Panamanian corporate service providers Mossack Fonseca, co-founder Ramon Fonseca Mora said in an interview with La Estrella.*

Jirrizulta illi, meta l-intimata, bhala gurnalista tal-gazzetta The Malta Independent, rredigiet l-artikolu originalment, hija kitbet is-segwent titolu "*Co-founder of Mossack Fonseca says company did not know Konrad Mizzi was politician.*"

Jirrizulta illi l-ewwel paragrafu tal-artikolu mihha redatt, imbghad, kien jghid is-segwent:

*"Ramon Fonseca Mora, co-founder of Mossack Fonseca, said that at the time of providing Energy and Health Minister Konrad Mizzi with his company's services, he did not know that Drt Mizzi was a politician."*

Jirrizulta illi sussegwentement, bhalma hija prassi fil-gazzetta The Malta Independent, l-intimata ghaddiet l-artikolu minnha redatt lill-EDITOR, liema EDITOR eventwalment biddel kemm it-titolu kif ukoll il-kontenut tal-artikolu u ppubblika l-artikolu kif mibdul bl-isem ta' l-intimata bhala artikolista.

## Ikkunsidrat

Jirrizulta illi, fit-traduzzjoni pprovdata mir-rikorrenti tal-artikolu ippubblikat fil-gazzetta *La Estrella de Panama* tas 16 ta' Marzu 2016, fil-parti tal-intervista fejn tirrigwarda Malta, l-istess Fonseca Mora jghid is-segwenti:

*“And there is nothing wrong in Malta. A gentleman creates a corporation for his family. What we didn't know is that he is a politician and we do not prepare corporations for politicians anymore. But there is nothing wrong there”* (fol 41)

Jirrizulta illi l-intimata, qabel ma ppubblikat l-istorja illi abbazi taghha rredigiet l-abbozz originali tal-artikolu, ottjeniet traduzzjoni mill-linga Spanjola ghal-lingwa Ingliza minn zewgt konoxxenzi taghha, liema traduzzjonijiet kienu jghidu hekk:

*“And as for Malta, there's nothing wrong there. A person did a company for his family. The only thing we missed (bil malti, harbitilna) was that this person is a politician. And we don't do companies for politicians. But in reality there's nothing wrong.”* (fol 53)

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*“And in Malta, there is nothing wrong. A man creates a company for his family. What escaped us is that this man is a politician and we do not deal with politicians any more. But there is nothing wrong there.”* (fol 54)

Jirrizulta, minn dokumentazzjoni ippresentata mir-rikorrent waqt il-mori tal-kawza, illi fis 16 ta' Gunju 2015, Karl Cini rrediga '**Trust Questionnaire and Due Diligence Sheet**' (fol 65 – 75) fejn, mistoqsi jekk *“Is the Settlor a Politically Exposed Person?”* fejn is-*“Settlor”* kien indikat precedentement bhala ir-rikorrent, hemm indikat *“YES”* (fol 66) kif ukoll fejn, mistoqsi jekk *“Is the Protector a Politically Exposed Person?”* fejn il-*“Protector”* kien indikat precedentement bhala ir-rikorrent, hemm indikat *“YES”* (fol 70)

Jirrizulta car, minn tali dokumentazzjoni u, aktar u aktar mit-traduzzjonijiet illi kellha fil-pussess taghha l-intimata meta rredigiet l-artikolu li eventwalment tbiddel mill-edituri tal-gazzetta *The Malta Independent*, illi r-rikorrent kien attwalment indika illi kien '*Politically Exposed Person*' u li di fatti li kien gara kien illi dina kienet allegatament sfuggiet lid-ditta tal-Panama Mossack Fonseca.

Jirrizulta, madanakollu, illi kemm it-titolu tal-artikolu kif ukoll il-kontenut tal-artikolu fejn jallegaw illi r-rikorrenti kien naqas milli jghid illi huwa kien politiku, liema kontenut tbiddel mill-edituri, skond ix-xhieda ta l-intimata, kienu lkoll zbaljati u qarrieqa lill-qarrej ordinarju.

## Ikkunsidrat

Jirrizulta illi fid-difiza taghha, l-intimata tikkontendi illi dak minnu miktub kien ibbazat fuq fatti verifikabbli u ta' interess pubbliku u ghalhekk kellu jitqies bhala fair comment u kritika accettata.

Il-Qorti thoss illi, qabel ma tghaddi biex taghmel il-kummenti w il-konsiderazzjonijiet taghha, huwa opportun illi taghmel riassunt tal-punti legali w gurisprudenza nostrana u estera dwar d-difiza mqajjma mill-intimat.

## Ikkunsidrat

L-ewwel u qabel kollox, huwa fatt inkontestat illi r-rikorrent huwa persuna pubblika peress illi kien membru tal-parlament u Ministru tal-Gvern tal-gurnata meta harget l-istorja meritu tal-kawza odjerna.

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.*

Mill-banda l-ohra, kif qalet il-Qorti Ewropea fil-kawza **Fresos & Roire vs France**

*“the press plays an important role in a democratic society, although it must not overstep certain bounds, in particular in respect of reputation and rights of others. People exercising freedom of expression including journalists undertake duties and responsibilities.”*

Jirrizulta, di fatti, illi l-intimata, fid-difiza taghha, qieghda tappella ghad-dritt tal-liberta ta' l-espressjoni w id-dritt tal-gurnalist illi hija kellha, u f'dana il-kuntest il-Qorti taghmel ukoll referenza ghall-kawza deciza mill-Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijet **Axel Springer AG vs Germany** deciza fis-7 ta' Frar 2012, fejn intqal is-segwent:

*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*

*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 Qorti tghid ukoll:

*81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see Pedersen and Baadsgaard, cited above, § 71). 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.*

Jigi osservat, madanakollu, illi r-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, ghandu jigi bilancjat bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, u ghalhekk, kif tghid il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kawza gia fuq imsemmija:

*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.*

Huwa ghalhekk dover ta' dina il-Qorti sabiex tassikura illi jintlahaq bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u dana sabiex jigi assikurat li hemm tali bilanc, ghal liema 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”*.

Tali kriterji gew mhaddna anke mill-Qrati taghna, kif qalet il-Prim Awla tal-Qorti Civili fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, fejn osservat korrettement illi :

*dwar l-aspett tad-difiża tal-kumment gust ilu żmien jingħad mill-Qrati taghna li, biex id-difiża tal-kumment gust tkun tghodd, jeħtieġ li min jistrieħ fuqha jseħħlu 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, tgħajir jew insolenza; u*
- (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jwegga' lil dak li jkun.*

Jinghad ukoll illi dawna l-qrati, inkluz dik odjerna, dejjem iprotegew il-gurnalizmu investigattiv, u di fatti, kif stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud**, deciza fit-3 ta' Frar, 2012:

*“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f’socjeta’ demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa’ allegazzjoni mhux pruvata kif trid il-Ligi. F’dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista’ wkoll ikun tollerat.”*

Din il-Qorti, madanakollu, ma tistax ma tosservax u taghmel referenza dwar dak illi hija gia kellha l-opportunita tghid fil-kawza mhux appellata fl-ismijet “**Alan Camilleri vs Saviour Balzan**” u deciza fl-20 ta’ Gunju 2016 fejn, dwar il-gurnalisti w id-doveri taghha, sahqet li

*“ ... ghalkemm huwa d-dover tal-gurnalist illi jgharraf u jzomm lill-pubbliku w il-qarrejja a korrent ta’ kull informazzjoni relatata ma’ agir ta’ persuni pubblici, kemm politici kif ukoll persuni fis-servizz civil u f’posizzjonijiet importanti fis-socjeta civili, huwa ferm aktar importanti illi l-gurnalist jassikura ruhu illi l-fatti kif minnu indikat huma sostanzjalment veri u, f’kazz illi huwa ma jkollux konfort ta’ provi sufficienti, ghandu jzomm lura milli jippubblika tali stejjer, stante illi l-pubblikazzjoni ta’ l-istess jwasslu sabiex il-kredibilita’ tal-gurnal u l-gurnalist tigi pregudikata u, aktar importanti, il-pubbliku in generali jinghata informazzjoni illi ma jkunx minnu, fatt illi, minnu nniffsu, huwa ta’ hsara kemm lill-persuna illi dwarha qed issir l-istorja u, aktar u aktar, lill-gurnalizmu il-general, li jisthoqqlu rispett ghax-xoghol siewi u ta’ utilita’ kbira ghas-socjeta demokratika hajja illi Malta tgawdi illum il-gurnata.*

Di fatti, kif 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.*

## **Ikkunsidrat**

Kif gia osservat aktar ‘l fuq fl-osservazzjonijiet ta’ dina l-Qorti, filwaqt illi fl-intervista rappurtata bil-lingwa spanjola fil-gazzetta ‘*La Estrella de Panama*’, Ramond Fonseca Mora jistqarr illi kienet haribilthom li r-rikorrent kien persuna politika, l-artikolu meritu tal-kawza odjerna, kemm fit-titolu principali tieghu, kif ukoll fil-korp tal-artikolu inniffsu, jikkontendi illi r-rikorrent kien naqas milli jindika illi kien persuna politika.

Jirrizulta b’mod car illi dak dikjarat mill-gazzetta b’tipi kbar u miktub ukoll fl-artikolu kien zbaljat totalment, peress illi, a kuntrarju ta’ dak illi huma allegaw, r-rikorrent kien attwalment indikalhom illi huwa kien ‘*a politically exposed person*’, kif di fatti gie dikjarat fit-**Trust Questionare and Due Diligence Sheet**.

Jirrizulta wkoll illi l-intimata, bhala l-artikolista, kienet di fatti fedelment rappurtat tali fatt meta, fit-titolu minnha redatt, kitbet “*Co-founder of Mosscaq Fonseca says company did not know Konrad Mizzi was politician.*”



Jirrizulta, madanakollu, illi l-editur, illi r-rikorrenti ghazel illi ma jharrixx fil-proceduri odjerni, ghazel unilateralment illi jbidel it-titolu tal-artikolu, bir-rizultat illi ppubblika dikjarazzjoni illi hija totalment skorretta u mhux minnha, fatt illi l-istess editur seta facilment jivverifika kieku huwa hares lejn it-traduzzjonjiet illi l-intimata kienet ottjeniet u li lkoll kienu jghidu illi lill Mossack Fonseca kienet **sfuggitilhom** illi r-rikorrent kien politiku, indikazzjoni cara illi r-rikorrent kien attwalment qalilhom li kien politiku izda huwa ma indunawx.

Jirrizulta car illi tali tibdil fit-titolu sar unikament sabiex jirreka dannu u malafama lir-rikorrent, udana ma jistax ma jigix kkundannat minn dina l-Qorti.

## **Ikkunsidrat**

Kif gia fuq indikat, jidher car illi l-intiza tal-editur meta huwa biddel it-titolu l-artikolu u ppubblikah kif jidher aktar 'l fuq kienet wahda unikament sabiex jirreka dannu u malafama lir-rikorrent, u ta' dan ir-rikorrent kellu kull dritt illi jirrikorri lejn il-Qorti sabiex jiprotegi r-reputazzjoni tieghu.

Jirrizulta, madanakollu, illi r-rikorrent, flok ma baghat dritt ta' risposta, kif kellu kull dritt illi jaghmel, u ghalhekk jinsisti illi dina tinghata l-istess prominenza ghall-artikolu minnu meqjus offensiv u jistenna biex jara jekk l-gazzetta tkunx tatu r-rimedju lilu misthoqq, liema soluzzjoni certament kien ikollha ferm aktar effett immedjat fuq il-qarrejja tal-gazzetta u tesponi l-verita' minnufih, ghazel illi jippubblika stqarrija permezz tad-Dipartiment tal-Infurmazzjoni u nieda l-proceduri odjerni minnufih.

Filwaqt illi l-Qorti tosserva illi r-rikorrent kellu kull dritt illi jipprocedi minnufih kontra l-intimata kif ukoll l-edituri tal-gazzetta The Malta Independent (haga illi ta' l-ahhar ma ghamilx), certament, ghar-reputazzjoni tar-rikorrent, kien ikollha ferm aktar effett kieku l-qarrejj, l-ghada illi tkun saret il-pubblikazzjoni malafamanti, jaqra korrezzjoni ta' l-istess gazzetta fejn tistqarr illi kienet zbaljata fit-titolu u ghalhekk tiskuza ruhha ghal tali fatt.

Il-fatt illi r-rikorrent nieda l-proceduri odjerni fisser illi eventwalment ir-rikorrent inghata rimedju finali biss aktar minn sentejn wara illi sehhet il-pubblikazzjoni, u filwaqt illi, kif gia stqarret il-Qorti, tifhem illi r-rikorrent kellu kull dritt li jirrikorri lejn il-Qorti, tifhem ukoll izda illi r-rikorrent kellu rimedji ohrajn illi huwa seta jacedi ghalihom biex jiprotegi r-reputazzjoni tieghu b'mod aktar immedjat.

Tali ragunament twassal lill Qorti biex timmitiga f'it id-danni finali likwidati mill-Qorti, anke in vista tal-fatt illi, bhala provi fuq danni, ir-rikorrent ma ressaq xejn, u l-Qorti tifhem illi ghar-rikorrent, bhala persuna fil-politika, huwa ferm aktar importanti illi tigi dikjarata falza allegazzjoni maghmulha kontra tieghu u ghalhekk ir-reputazzjoni tieghu tigi ripristinata illi l-aspett finanzjarju tad-danni likwidati.

## **Konkluzjoni**

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi semghet it-trattazzjoni ta' l-abbli difensuri taz-zewgt partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tichad** l-ecezzjonijiet kollha ta' l-intimata,

**Tilqa** it-talbiet attrici, u ghalhekk, filwaqt illi

**Tiddikjara** it-titolu w il-kontenut tal-artikolu intitolat "**Konrad Mizzi did not divulge he was a politician – cofounder of Mossak Fonseca**" illi giet ppubblikata fil-harga tal-gazzetta '*The Malta Independent*' ta' nhar il-Hamis, 7 ta' April 2016 fuq l-ewwel u fil-hames pagna ta' l-istess gurnal, kien libelluz u malafamanti fil-konfront tar-rikorrenti Dr Konrad Mizzi.

**Tikkundanna** lill-intimata thallas lir-rikorrent Dr Konrad Mizzi bhala danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta' elfejn Euro (€2,000).

**Spejjez** kollha tal-proceduri odjerni u **Imghax** sad-data tal-pagament effettiv ikun a kariku ta' l-intimata.

**Magistrat Francesco Depasquale**

**Rita Sciberras**  
Deputat Registratur