



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn hamsa u ghoxrin (25) ta' Gunju 2018

Rikors Numru 230/15 FDP

Dr Simon Busuttil
(ID 242669M)

vs

Aleander Balzan
(ID 586485M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit-3 ta' Awissu 2015 fejn ir-rikorrent talab lill-Qorti tikkundanna lir-rikorrent, bhala editur tal-gurnal It-Torca

- 1. Previa li din l-Onorabli Qorti tiddeciedi u tiddikjara li s-servizz televiżiv li xxandar fil-bulettin tal-ahbarijiet 'One News' fuq l-istazzjon televiżiv 'One Television' fit-tnejn (2) ta' Awissu tas-sena elfejn u hmistax (2015) fis-sebgha u nofs ta' filghaxija (7.30pm) intitolat 'BUSUTTIL F'LAQGHA MA GAFFARENA' kien jikkontjeni allegazzjonijiet u insinwazzjonijiet inveritjieri, foloz u malafamanti fil-konfront tal-attur u li ghandhom bhala skop li joffendu l-unur, ir-reputazzjoni u l-fama tieghu u li jesponuh ghar-redikolu u disprezz tal-pubbliku u/jew ihammgu r-reputazzjoni tieghu, senjatament fejn gie allegat li l-attur "... seta' ssupervja ma' Joe Gaffarena wara li rrizulta li dan tal-ahhar ma setax jaghti dak li ried lil Simon Busuttil..." li l-attur "... kien jemmen li Joe Gaffarena seta' kellu dokumenti importanti b'rabta mal-kaz tad-Daewoo li imur lura ghal nofs is-snin disghin, kaz li fih kien jissemma hafna l-eks Kummissarju Ewropew John Dalli u li qabel l-elezzjoni generali l- Partit Nazzjonalista kien qed jara kif jista' jimminah ..." kif ukoll numru ta' siltiet ohra li xxandru fl-imsemmi servizz televiżiv;*

2. *Tikkundanna lill-intimat sabiex ihallas lill-attur dik is-somma li tiffissa l-istess Onorabbli Qorti, liema somma ma teccedix I-ammont ta' hdax-il elf, sitt mija u sitta u erbghin ewro (11,646.00) bhala danni b'applikazzjoni tal-Att dwar l-Istampa, Kap. 248 tal-Ligijiet ta' Malta.*

Rat l-kontenut tal-ahbar kif imtella fuq in-news tal-One TV fis 19.30pm, illi kien jghid li gej:

II-Kap tal-Partit Nazzjonalista Simon Busuttil kellu laqgħa ma' Joe Gaffarena qabel l-elezzjoni generali li għaddiet u skont rapport fit-Torca Simon Busuttil seta' ssupervja ma' Gaffarena wara li rriżulta li dan tal-ahbar ma setax jagħti dak li ried lil Simon Busuttil. Din il-laqgħa kienet ikkoordinata mill-eks-ministru tas-sahha Joe Cassar meta Busuttil kien vici Kap tal-Partit Nazzjonalista. Jidher li kien Busuttil li kellu x-xewga li jiltaqa' ma' ta' Gaffarena li dak iż-żmien kienu qed jilmentaw mill-fatt li kellhom permess għal pompa tal-petrol f'Hal Qormi miżmum.

It-Torca tikkwota sorsi li qalulha kif Busuttil kien jemma li Joe Gaffarena seta' kellu dokumenti importanti b'rabta mal-każ tad-Daewoo li jmur lura għal nofs is-snin disghin, każ li fih kien jisemma hafna l-eks Kummissarju Ewropew John Dalli u li qabel l-elezzjoni generali l-Partit Nazzjonalista kien qed jara kif jista' jimminah. Dan kemm bl-allegazzjonijiet dwar id-Direttiva tat-Tabakk u kull materjal iehor li seta' jinkiseb. Iżda jirriżulta li meta deher bič-čar li Joe Gaffarena u ibnu ma setghux jaqdu lil Busuttil, dan lanqas biss ried jibqa' jithadded magħhom dwar il-permess tal-pompa f'Hal Qormi.

Ikkuntattjat mit-Torca, Joe Gaffarena ma tantx deher entużjast li jikkummenta, għalkemm ikkonferma li lil Joe Cassar jafu sew, filwaqt li tkellem ukoll kif tul iż-żmien nies bhal Eddie Fenech Adami u Guido de Marco kellhom rispettt kbir lejhom, iżda mhux l-istess f'Lawrence Gonzi u eventwalment Simon Busuttil. Gaffarena tkellem kif gieli ta donazzjonijiet lill-Partit Nazzjonalista, tant li sa Gunju ta' din is-sena stess ta elf u hames mitt ewro (€1500) f'riklami biex jidhru fuq in-Net, riklami li tahom lil Frank Psaila u Michael Fenech Adami, hu Beppe Fenech Adami, l-istess Beppe Fenech Adami li l-Gimgha pprova jagħti l-impressjoni li jaf lil ta' Gaffarena kif jafhom kulhadd, għalkemm wara hareg li mhux minnu, anke għax Marco Gaffarena kiteb kif kiel u xorob ma' Fenech Adami, wasslu d-dar il-Għarghur kemm-il darba u qalla l-liri lil mart Fenech Adami meta kienet in-Nutar tiegħu.

Rat ir-risposta ta' l-intimat ippresentata fit-12 ta' Ottubru 2015 fejn laqa' għal dak mitlub billi qal is-segwenti:

1. *Illi qabel xejn, u f'linea preliminari, I-esponent jirriveva illi x-xandira allegatament libelluza kienet sempliciment tirriproduci dak li qalet gazzetta lokali u għaldaqstant l-esponent ma huwiex legittimu kontradittur;*
2. *Illi bla ebda' pregudizzju għal premiss, u fil-mertu, jigi umilment sottomess illi x-xandira in kwistjoni si tratta fatti w kummenti ta' natura socjali u politika, rigwardanti persuni pubblici fosthom ir-rikorrent, u għalhekk huma fl-interess generali u pubbliku u jikkostitwixxu fair comment f'socjetà demokratika;*

3. *Illi f'dan ir-rigward il-Qrati nostrali ilhom isostnu illi ".persuna politika..huwa soggett ghall- livell ta' kritika ampja jekk mhux anke provokattiva, peress illi, ladarba persuna taghzel li taghti servizz fil-hajja pubblika bhala politiku, huwa ghandu jkun lest illi jigi kritikat ghall- kummenti u veduti tieghu, liema kritika tista tkun anke harxa, peress illi huwa essenzjali ghall- pajiz demokratiku bhalma hija dik Maltija illi jigi assikurat li mhux biss kullhadd ghandu d- dritt ta' liberta ta' espressjoni, izda, aktar u aktar, illi kullhadd ikollu wkoll id-dritt illi jigi mgharraf dwar kull informazzjoni u fatt li tista b'xi mod, tolgot il-kredibilita' ta' persuna politika."* (Avviz Nru. 328/2006, "Norman Lowell vs Saviour Balzan et", Qorti tal- Magistrati (Malta), 5 ta' Ottubru, 2015);
4. *Illi f'kull kaz ma kien hemm assolutament xejn fit-tali xandira li jista' ragjonevolment u legalment jitqies bhala malafamanti, intiz biex jirredikola u/jew ta' attakk fuq il-karattru tar- rikorrent;*

Rat illi fil 15 ta' Ottuvru 2015 il-partijiet qabblu illi l-provi migbura fil-kawza 227/15 FDP fl-ismijiet "Dr Simon Busuttil vs Josef Caruana" dwar l-istess meritu kellhom japplikaw ghall-kawza odjerna.

Rat l-affidavit ta' **Dr Simon Busuttil**, ippresentat fit-19 ta' Novembru 2015.

Semghet ix-xhieda ta' **Dr Joseph Cassar**, moghtija fis-7 ta' April 2016, u prodott mir-rikorrenti, in ezami u kontro ezami.

Rat illi fis 7 ta' April 2016 ir-rikorrenti ddikjara illi ma kellux aktar provi x'jipresenta.

Semghet ix-xhieda ta' **Josef Caruana** moghtija fis-6 ta' Ottubru 2016.

Ra l-affidavit ta' **Joseph Gaffarena** u ta' **Marco Gaffarena** ppresentat mill-intimat fix-xhieda tieghu u li tinstab inserita fil-process 231/15 fl-ismijiet 'Dr Simon Busuttil vs Josef Caruana' (fol 33 u 35) illi qiegħda tigi deciza flimkien mal-kawza odjerna.

Semghet ix-xhieda ta' Joseph Gaffarena, moghtija fis-16 ta' Frar 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ta' **Marco Gaffarena**, moghtija fl-24 ta' April 2017 u prodott mill-intimat, in ezami u kontro ezami.

Semghet ix-xhieda ulterjuri ta' **Dr Joseph Cassar**, moghtija fl-20 ta' Novembru 2017, u prodott mir-rikorrenti, in ezami u kontro ezami.

Semghet ix-xhieda ta' l-intimat **Aleander Balzan** moghtija fit 18 ta' Jannar 2018.

Semghet ix-xhieda ta' **Josef Caruana** moghtija fit-22 ta' Jannar 2018.

Rat illi fid-19 ta' Frar 2018, in vista tal-assenza ta' l-intimat u l-konsulent legali tieghu, il-Qorti qieset illi l-intimat ma kellux aktar provi u għalhekk ddiferixxa l-kawza għat trattazzjoni finali.

Semghet is-sottomissjonijiet orali tal-abbli difensur tar-rikorrent moghtija fl-10 ta' Mejju 2018, wara liema data il-kawza giet differita għas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrenti, Dr Simon Busuttil, meta giet mxandra l-istorja meritu tal-kawza odjerna, kien Kap tal-Partit Nazzjonalista u Kap tal-Opposizzjoni tal-gurnata.

Jirrizulta wkoll illi qabel l-Elezzjoni Generali tas-sena 2013, huwa kien Vici Kap tal-Partit Nazzjonalista.

Jirrizulta illi fil-periodu meta giet imxandra l-istorja meritu tal-kawza odjerna, kienu qieghdin jigu rappurtata stejjer fuq il-mezzi tax-xandir illi kienet tinvolvi lill-familja Gaffarena, wahda illi kienet tirrigwarda l-ghoti ta' permess ghall-pompa tal-petrol gewwa Hal-Qormi lill Joseph Gaffarena u ohra illi kienet tirrigwarda l-akkwist da' parte ta' Marco Gaffarena ta' sehem ta' binja gewwa Strada Zekka, il-Belt, liema storja spiccat kemm fuq il-mezzi tax-xandir kif ukoll fil-Qrati.

Jirrizulta illi fit-tnejn (2) ta' Awissu 2015, il-gazzetta ta' nhar ta' Hadd, it-Torca, tellghet storja fil-faccata taghha u kompliet fid-disgha pagna, fejn allegat illi r-rikorrent Simon Busuttil, qabel l-elezzjoni tas-sena 2013, talab illi jiltaqa' mal-familja Gaffarena, precizament Joe Gaffarena u Marco Gaffarena, sabiex jinghata informazzjoni da' parte ta' l-istess Gaffarena dwar il-kaz tad-Daewoo illi kien seh ghoxrin sena qabel, biex ikun jista jattakka politikament lill John Dalli – dina hija l-meritu tal-kawza 227/15 fl-ismijiet 'Dr Simon Busuttil vs Josef Caruana' illi qed tigi deciza kontestwalment mal-kawza odjerna.

Jirrizulta illi, tali storja eventwalment giet irrappurtata fuq il-One News, li hija l-meritu tal-kawza odjerna, kif ukoll fuq il-'One Radio', li hija l-meritu tal-kawza Rik Nru 230/15 – '*Simon Busuttil vs Aleander Balzan*', liema kawza qed tigi deciza kontestwalment mal-kawza odjerna wkoll.

Jirrizulta wkoll illi tali storja giet ukoll irrappurtata fil-gurnal l-Orizzont tat-3 ta' Awissu 2015 u l-4 ta' Awissu 2015, liema artikoli huma l-meritu ta' zewgt kawzi ohra, Rik Nru 228/15 u 231/18 rispettivament, t-tnejn fl-ismijiet 'Simon Busuttil vs Josef Caruana', liema kawzi qed jigu decizi kontestwalment mal-kawza odjerna.

Ikkunsidrat

Jirrizulta illi, fil-proceduri odjerni, xehdu, apparti z-zewgt partijiet, Dr Joseph Cassar prodott mir-rikorrent, Joseph Gaffarena, li tieghu gie ppresentat wkoll affidavit datat 3 ta' Awissu 2015, ossija l-ghada illi giet imxandra l-ahbar meritu tal-kawza odjerna, u Marco Gaffarena, dawn it-tnejn ta' l-ahhar prodotti mill-intimat.

Jirrizulta illi, skond ma jintqal fl-ahbar meritu tal-kawza odjerna, ir-rikorrent, meta kien ghadu Vici Kap tal-Partit Nazzjonalista u qabel l-Elezzjoni Generali ta' Marzu 2013, kien talab specifikament sabiex jiltaqa' ma' Joseph u Marco Gaffarena, missier u iben, u kien inkariga lill Dr Joseph Cassar, dak iz-zmien Ministru tas-sahha fil-Gvern tal-gurnata immexxi mill-Partit Nazzjonalista, sabiex jirringa tali laqgha.

Jirrizulta, dejjem skond tali ahbar, illi l-laqgha kienet intiza da' parte tar-rikorrent sabiex l-familja Gaffarena tipproducilu dokumentazzjoni u "*Busuttil kien jemmen li Joe Gaffarena seta\ kellu dokumenti importanti b'rabta mal-kaz tad-Daewoo li jmur lura ghal nofs is-snin disghin, kaz li fih*

kien jissemma hafna l-eks Kummissarju Ewropew John Dalli u li qabel l-elezzjoni generali l-Partit Nazzjonalista kien qed jara kif jista jimminah”

Jirrizulta, dejjem skond tali ahbar, illi l-familja Gaffarena ma gabitlu ebda dokumentazzjoni izda insistiet illi r-rikorrenti, bhala Vici Kap tal-Partit Nazzjonalista u bhala pjacir fil-periodu ta’ qabel l-Elezzjoni Generali, kellu jghinhom sabiex jigibu l-permess ghall-pompa tal-petrol gewwa Hal Qormi, liema permiss il-MEPA kienu qed jirrifjutaw illi jaghtuh.

Jirrizulta, skond dak miktub fl-ahbar, illi r-rikorrent f’tali laqgħa *“seta ssupervja ma’ Gaffarena wara li rrizultat li dan tal-ahbar ma setax jaghti daf li ried lil Simon Busuttil.”*

Ikkunsidrat

Dr Joseph Cassar, prodott mir-rikorrent, jikkontendi illi f’laqgħa illi huwa kellu ma’ Joseph Gaffarena, dana kien talbu li jirrangalu laqgħa mar-rikorrent Dr Simon Busuttil, liema laqgħa huwa kien ha hsieb illi jirringa, u li saret gewwa d-Dar Centrali tal-Partit Nazzjonalista, għal liema laqgħa Joseph Gaffarena attenda għaliha wahdu flimkien ma’ Dr Joseph Cassar u r-rikorrent.

Jirrizulta, skond Dr Cassar, illi Joseph Gaffarena ried jiltaqa’ mar-rikorrent sabiex jiddiskuti l-problema tiegħu relatata mar-rifjut tal-hrug ta’ permiss għall-pompa tal-petrol ta’ Hal Qormi illi huwa kellu, u Gaffarena intalab minn Dr Cassar igib miegħu d-dokumentazzjoni kollha in konnessjoni ma’ tali pompa u l-permessi illi huwa kien qieghed jitlob.

Jirrizulta illi, skond Dr Cassar, waqt il-laqgħa, Joseph Gaffarena lmentat miegħu dwar il-posizzjoni mehuda mill-MEPA kontra l-pompa tal-petrol tiegħu u, skond Dr Cassar, ir-risposta ta’ Dr Busuttil kienet lill Joseph Gaffarena: *“kien jaf x’inhuma l-affarjiet li kellu jagħmel biex he puts himself in order with MEPA.”* (fol 26)

Jirrizulta, dejjem skond Dr Cassar, illi iben Joseph Gaffarena, Marco Gaffarena, ma kienx presenti, u fl-ebda mument waqt il-laqgħa ma saret referenza għall-kwistjoni tad-Daewoo u John Dalli u Joseph Gaffarena qatt ma ntabab jipproduci dokument in konnessjoni mad-Daewoo.

Ikkunsidrat

Jirrizulta illi Joseph Gaffarena, fix-xhieda tiegħu, kif ukoll ikkonfermat fl-affidavit tiegħu miktub min-Nutar peress illi huwa stqarr li ma jafx jikteb, huwa jagħti s-segweni verzzjoni tal-fatti:

Ghedtlu (lill Marco Gaffarena) “imxi miegħi ghedtlu ghax iriedna Simon Busuttil. Ghedtlu nahseb li ser jagħtuna l-permess tal-pompa,” jien. U jiena morna, kif dhalt, mejda kbira hekk. Cassar hawn fit-tarf tagħha, jien hawn, it-tifel tiegħi hdejja, u Simon bilqieghda hekk quddiemna. Qalli “mela ma gibthomx il-karti?” Ghedtlu “x’ karti huma?” Qalli “mhux tad-Daewoo!” Ghedtlu “jien hsibt li l-karti tal-pompa. Id-Dawoow x’ ghandha x’ taqsam?”, jien. “Ta’ John Dalli ta’ John Dalli”. Ghedtlu “jiena x’ ghandi x’ naqsam f’ dawn l-affarijiet? Ghedtlu jien fuq il-pompa ghandi x’ naqsam, dak li jinteressani, mhux minn John Dalli!” Qam Simon minn bilqieghda u qal “ghax is-Sur Gaffarena jaf x’ ghandu jagħmel.” Ghedtlu “min qallek li ma nafx x’ ghandi nagħmel?” Ghedtlu “bye”. U talqt il barra. Dik l-istorja.

Jirrizulta illi, fix-xhieda ta' Joseph Gaffarena, huwa jikkontendi illi lill-Partit Nazzjonalista huwa kien ta hafna flus “*biex nghinhom ghal partit dak iz-zmien*” u “*tlett xhur qabel (il-laqgħa mar-rikorrenti) tajthom ghoxrin elf. Tliet xhur qabel, hadhomli ta' xejn il-familja tieghi!*”(fol 35-36)

Jirrizulta illi, mitlub jghid jekk kienx qed jippretendi illi l-Partit Nazzjonalista johroglu l-permess tal-pompa tal-petrol ta' Hal Qormi, huwa jghid is-segwent:

Ma' hadd iehor mhux hekk ghamlu? Tahulhom il-permess. Mhux ser noqghod insemmi lil min. Ma jinteressani minn hadd jien. Imma kulhadd jaf min huma. Daqs kemm taw.

Jirrizulta, finalment, illi dejjem skond Joseph Gaffarena, illi wara l-Elezzjoni Generali, il-permezz tal-pompa tal-petrol inhariglu, ghalkemm kellu jagħmel garanzija ta' nofs miljun Euro.

Dwar ir-rikorrent, Joseph Gaffarena kellu dan x'jghid: (fol 34-35)

“Dejjem jattakkani familjari, personali, familja. Mill-pedament sa fuq. Il-familja x' tahti? Għalfejn dejjem jattakka l-familja tieghi? Ma għandux hu familja x' jara? Ma għamilx zbalji mal-familja tieghu? Jien ma għamiltx wiehed. Wiehed. Imma hu għamel kemm għamel ...!

...

Tieghi jara? Tagħna jara? Lilna jattakka l-hin kollu!? Dahhal lilna u għadu jattakkana s' issa u l-pompa qieghda magħluqa. Għaliex? Għandi daqshekk tfal! X' jagħmlu t-tfal? Imorru jitgħallqu kollha?! U jien magħhom l-ewwel wiehed?!

...

...il-pompa jien. Barra li hadu huma l-eluf ta' liri kbar.”

Jirrizulta illi Marco Gaffarena, fix-xhieda tieghu, dwar il-laqgħa jghid illi huwa kien presenti dakinhar tal-laqgħa flimkien ma' missieru, Joseph Gaffarena, u Dr Joseph Cassar, u dwar il-laqgħa qal li jmiss: (fol 63)

Kien hawn sufan hawn Sur Magistrat, sufan hawn u sufan hawn, u kien hawn mejda baxxa hawnhekk. Simon Busuttil qam minn fuq is-sufan; imma mhux minn fuq il-mejda! Hadd ma qam minn fuq il-mejda.

Jirrizulta illi, konfrontat bil-fatt illi missieru, Joseph Gaffarena, stqarr illi ltaqgħu madwar mejda, Marco Gaffarena jghid is-segwent: (fol 64)

Jekk il-mejda kienet madwar is-sufan tagħmel allura innehhi l-mejda min-nofs?! Mela l-ufficju tieghi! (jidhaq) la kienet hemm! Jien x' nagħmlilha?

Da zgur li tad-dahq. Taf fejn mhix tad-dahq x' hin kont intihom l-ghaxart elef...

Ma tghidhiex meta kienu icempluli ghaxar elef - ghaxart elef biex jaghtuni permess; ghida dik; ghiduha. Il-hin kollu jcemplu.

Ikkunsidrat

Qabel ma l-Qorti tghaddi biex taghmel l-apprezzament tal-provi taghha w l-konkluzjonjiet minnha milhuqa, ikun opportun illi jigu kkunsidrat l-elementi legali tad-difiza ta' l-intimat.

Jirrizulta, mill-eccezzjonijiet mqajjma mill-intimat, li d-difiza mqajjma mill-intimat kienu tnejn: illi huwa kien qieghed jirriproduci dak illi qalet il-gazzetta t-Torca u ghalhekk ma huwiex il-legittimu kontradittur; u dik ta' "*fair comment*" dwar persuna involuta fil-politika, bhalma huwa r-rikorrent, li huwa Kap tal-Opposizzjoni, liema kritika setghet tkun oghla, u anke iebes kif ukoll dwar id-dover illi huwa kellu, bhala gurnalist, illi jwassal ahbar lill-qarrejja sabiex jigi interpretat minnhom.

L-intimat jistqarr illi bhala editur ezercita d-diligenza rikjesta mill-ligi filwaqt illi sahaq li l-artikolista kellu d-dritt tikkummenta dwar l-operat tar-rikorrent.

Ikkunsidrat

L-ewwel u qabel l-intimat qajjem id-difiza hekk imsejjha ta' 'regola ta' pubblikazzjoni wahda', ossija illi huwa kull ma ghamel kien illi rriproduca dak illi qalet gazzetta ohra u ghalhekk kellu jigi liberat mill-osservanza tal-gudizzju.

Il-Qorti tosserva illi l-eccezzjoni mqajjma mill-intimat hija wahda li tikkontendi illi l-intimat ghandu jibbenefika minn xi tip ta' privilegg tenut kont tal-fatt illi huwa kull ma ghamel kien irrapporta dak illi kien gia gie rrapportat.

Il-Qorti tosserva wkoll illi, fil-Kap 248, illum mhassar u rimpjazzat mill-Kap 579, u lanqas fl-istess Kap 579 imsejjah 'Att dwar il-Midja u Malafama' ma hemm ikkontemplat id-difiza mqajjma mill-intimat, u dak minnu riprodott ma huwa kopert minn ebda tip ta' privilegg, kwalifikat jew le.

Il-Qorti tqis illi la darba parti ghazlet illi tirriproduci bhala storja taghha dak illi gie rrapportat fuq mezz ta' xandir iehor, hija awtomatikament assumiet r-responsabbilta' ta' dak illi hija qalet u xandiritha lill-qarrejja jew, fil-kaz odjern, lit-tespettaturi taghha, bir-rizultat illi hija konsegwentement responsabbli ghal dak illi ntqal.

Ikkunsidrat

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

Dwar ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli biex tghid is-segwent:

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".

.....

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.

Tali rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandu jigi bilancjat bi drittijiet u obbligi illi l-istess gurnalist, fil-qadi ta' dmirijietu, ghandu josserva u, di fatti, il-Qorti Ewropea, 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.

Biex jigi accertat jekk intlaħaqx bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fl-istess decizjoni fuq

imsemmija, tghaddi biex issemmi sitt kriterji importanti illi ghandhom jitqiesu sabiex jigi assikurat li, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*".

Dawna l-kriterji kif stabbiliti huwa s-segwenti:

(a) Contribution to a debate of general interest

90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest

(b) How well known is the person concerned and what is the subject of the report?

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.

Whilst in the former case the press exercises its role of “public watchdog” in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public’s right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person’s private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.

(c) Prior conduct of the person concerned

92. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.

(d) Method of obtaining the information and its veracity

93. *The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.*

(e) Content, form and consequences of the publication

94. *The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.*

(f) Severity of the sanction imposed

95. *Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.*

Ghandu jigi osservat ukoll illi, kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, il-politiku huwa soggett ghall-livell ta' kritika ferm oghla minn-normal, u di fatti, s-sentenza tghid:-

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.

Kif gie osservat fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, id-dritt tal-liberta' ta' l-espressjoni, li giet invokata mill-intimat, giet ikkunsidrata kif gej:

78. *The fundamental principles concerning the question whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised as follows:*

(i) 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, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

.....

79. Furthermore, 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.

80. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.

81. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.

82. The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.

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.

Tali principju kif fuq enuncjat reggha gie ripetut fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fejn intqal is-segwent:

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.

Fl-istess decizjoni, il-Qorti ghamlet is-segwent osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

A fundamental distinction should be made between statements that are to be categorized as factual assertions and value judgments. In its contextual examination of the disputed statement as a whole, the Court must carry out its own evaluation of the impugned statement. Furthermore, the Court has acknowledged that the distinction between value-judgments and statements of fact may be blurred, and that the issue may need to be resolved by examining the degree of factual proof.

Dana l-argument huwa rifless anke fid-decizjoni illi l-istess Qorti kienet tat fil-kawza **Sizma vs Hungary** deciza f'Ottubru 2012 fejn intqal is-segwent:

"The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be."

Dwar 'fair comment', imbgħad, **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, intqal is-segwentni :

... dwar l-aspett tad-difiza tal-kumment gust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza 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 ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.

Tali tagħlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord Phillips għamel is-segwentni konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the 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.

Ikkunsidrat

Jirrizulta illi, fl-ahbar imxandar u meritu tal-kawza odjerna, l-allegazzjoni illi saret fil-konfront tar-rikorrent kienet illi huwa kien ssupervja mal-familja Gaffarena meta huma ma tawhx materjal kif xtaq hu biex jagħmel hsara lill ex-Ministru John Dalli.

Jirrizulta, illi l-intimat ibbaza l-istorja tieghu fuq sors anonimu illi taht tali informazzjoni, liema informazzjoni sussegwentement giet ikkonfermata minn Joseph Gaffarena meta sar kuntatt mieghu.

Jirrizulta ukoll illi l-ghada tal-pubblikazzjoni, Joseph Gaffarena u Marco Gaffarena ghamlu affidavit redatt mill-Avukat taghhom Dr Keith Bonnici u mahluf quddiem in-Nutar taghhom n-Nutar Mario Bugeja.

Din il-Qorti tosserva illi kellha l-opportunita illi tisma viva voce l-verzjoni tal-fatti moghtija minn Dr Joseph Cassar, li kien il-persuna li ha hsieb li organizza tali laqgħa, u lill Joseph Gaffarena u Marco Gaffarena, u setghet tiehu qies tal-komportament tax-xhieda fuq il-pedana tax-xhieda u l-attitudni taghhom lejn kemm il-Qorti kif ukoll id-difensur tar-rikorrent, u abbazi ta' dan tista, minghajr ebda esitazzjoni, tghid illi l-verzjoni tal-fatti kif moghtija minn Dr Joseph Cassar huma ferm aktar kredibbli u veritjeri minn dawk moghtija minn Joseph u Marco Gaffarena.

Il-Qorti tasal għal tali konkluzjoni in vista tal-fatt illi, filwaqt illi Dr Cassar kien konsistenti fix-xhieda tieghu u fil-verzjoni tal-fatti minnu moghtija, s-sinjuri Gaffarena, għalkemm missier u iben, jidher illi ma' kienux ppreparaw rwiehom sew meta taw ix-xhieda taghhom viva voce, problema illi huma ma kellhomx meta ghamlu l-affidavit taghhom li gie għalihom redatt u ffirmat mill-konsulenti legali taghhom.

Dana qieghed jinghad ghax, filwaqt illi Joseph Gaffarena viva voce jikkontendi illi huma dahhlu gewwa kamra fejn kien hemm mejda kbira u ltaqgħu madwar mejda, Marco Gaffarena, illi allegatament kien presenti għall l-istess laqgħa, viva voce jghid illi huma dahhlu u qagħdu bilqieghda fuq sufanijiet u l-aqgħa saret madwar sufanijiet u, meta Marco Gaffarena kien konfrontat mill-fatt illi missieri qal li ltaqgħu madwar mejda, huwa pprova jsalva l-posizzjoni tieghu billi jghid illi kien hemm mejda bejn is-sufanijiet.

Għalkemm tali dettall jista jaghti kaz illi huwa wiehed minimu u insignifikanti, il-Qorti ma tistax ma tosservax illi huwa f'tali dettall u fin-nuqqas ta' korroborazzjoni ta' tali dettall illi johrog car jekk ix-xhieda humiex qed jghidu l-verita' jew inkella qieghdin jivvintaw storja sabiex jagħmlu hsara lill persuna.

Il-Qorti bla ebda esitazzjoni ma għandha ebda dubju illi l-verzjoni tal-fatti moghtija minn Joseph u Marco Gaffarena ma hijiex veritjera u hija verzjoni tal fatti dettata mill-mibgheda illi l-istess Gaffarena għandhom fil-konfront tar-rikorrent Dr Simon Busuttil u l-Partit Nazzjonalista li tieghu huwa kien Vici Kap dak iz-zmien, u dana peress illi kienu qed jirrifjutaw illi jagevolawh sabiex johorgulu l-permess tal-MEPA għall-pompa tal-petrol illi attwalment il-MEPA kienu għalqulu ghax kien bena sular aktar minn dak lilu permess.

Il-Qorti tosserva illi, kif johrog car mix-xhieda, l-familja Gaffarena ppretendiet illi la darba hallset hafna flus lill Partit Nazzjonalista, saħansitra ammont ta' ghoxrin elf Euro ffit gimghat qabel il-laqgħa, huma kienu qed jistennew illi jinhargilhom il-permess illi kellhom bżonn, u talli tali permess ma harigx, huma kienu disposti illi jagħmlu allegazzjonijiet inveritjeri, anke bil-gurament.

Għaldaqstant, johrog car illi l-bazi tal-ahbar meritu tal-kawza odjerna, ossija l-verzjoni tal-fatti ta' Joseph Gaffarena, ma hijiex sostanzjalment vera u, anzi, hija totalment kontradetta kemm mir-rikorrent u, aktar u aktar, minn Dr Joseph Cassar, illi kien il-persuna illi laqqa lill Joseph Gaffarena mar-rikorrent u li kien presenti dakinhar.

Il-Qorti thoss, f'dana l-istadju, illi għandha tagħmel referenza għal dak 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 mbagħad tipprova tistahba wara dan id- dritt.

Kif gie ukoll osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Engineer Anthony Bezzina vs Josef Caruana**' deciza fl-10 ta' Marzu 2017,

Filwaqt li gurnalist ghandu kull jedd u anzi dmir li jirrapporta grajjiet ta' interess pubbliku, pero' ghandu jaqdi dmirijietu in bona fede u m'ghandux jedd jakkuza persuna b'fatti li ma jkunux veri. Id-dritt tal-liberta ta' espressjoni mhuwiex dak li tivvinta .

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi seghet it-trattazzjoni orali ta' l-abbli difensuri tal-partijiet,

Wara illi ghamlet il-konsiderazzjonijiet kollha taghha kif fuq spjegat,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimati,

Tilqa t-talba tar-rikorrent kif dedotti u

Tiddikjara il-kontenut ta' l-ahbar imxandar fil-bulettin tal-ahbarijiet 'One News' fuq l-istazzjon televiżiv 'One Television' fit-tnejn (2) ta' Awwissu tas-sena elfejn u hmistax (2015) fis-sebgha u nofs ta' filghaxija (7.30pm) intitolat 'BUSUTTIL F'LAQGHA MA GAFFARENA' bhala libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna, a tenur ta' l-artikolu 28 tal-Kap 248, lill-intimat ihallas lir-rikorrent is-somma komplessiva ta' elf Euro (€1,000) in linea ta' danni sofferti minnu rizultat tal-pubblikazzjoni ta' l-istorja fuq imsemmija.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku ta' l-intimat

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur