



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis hamsa (5) ta' Lulju 2018

Rikors Numru 425/12 FDP

Dr Helena Dalli
(ID 599062M)

vs

Dr Paul Borg Olivier, Segretarju Generali tal-Partit Nazzjonalista u, b'digriet tat 3 ta' Ottubru 2014, l-atti gew assunti minn Dr Chris Said bhala Segretarju Generali tal-Partit Nazzjonalista u, b'digriet tad-9 ta' April 2018, l-atti gew assunti minn Clyde Puli bhala Segretarju Generali tal-Partit Nazzjonalista

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit-12 ta' Dicembru 2012 fejn ir-rikorrenti, filwaqt illi ghamlet referenza ghall-flyer mibghut b'mod anonimu mill-Partit Nazzjonalista, sahqet illi dak dikjarat fil-flyer kien libelluz u malafamanti fil-konfront taghha u kien intiz biex itellef jew inaqqas ir-reputazzjoni taghha, w ghalhekk hija talbet lill-Qorti tiddikjara illi tali flyer kien libelluz w malafamanti filwaqt illi tikkundanna lill-intimat ihallas danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat kopja tal-'flyer' li dwaru tilmenta r-rikorrenti li huwa fuq zewgt pagni u ma ghandu ebda simbolu tal-Partit Nazzjonalista fejn fuq pagna wahda jinghad is-segwent:

Transfer

14 ta' Lulju 2013

Skont ilpolicy imhabbra minn Helena Dalli wara audit li sar gie deciz liinti m'ghandhekk tibqa' fil-post tax-xoghol tieghek mal-Gvern.

Ghalhekk minn nhar it-Tnejn inti m'ghandhekk tibqa tirraporta fil-post tax-xoghol tieghek

Ara wara ghal aktar dettalji.

U fuq pagna ohra jinghad is-segwenti:

GVERN TAL-LABOUR JAGHMEL EZERCIZZJU TA' TRANSFERS

Ftit tal-jiem ilu x-Shadow Minister Laburista Helena Dalli habbret li Gvern Laburista mmexxi minn Muscat jaghmel audit fost il-haddiema tal-Gvern. Il-Labour irid jiddeciedi hu min haqqu jkun fil-post tax-xoghol tieghek.

Il-Labour irid li l-Ministru mahtur minn Muscat ikollu s-sahha jaghti transfer lill-haddiema tal-Gvern.

*“Min ma jisthoqqlux li jkun hemm se jitnehha”
Helena Dalli, Shadow Minister Tas-Servizz Pubbliku
25 ta' Ottubru 2012*

DAN L-INKWIET M'GHANDEKX BZONNU

Rat ir-risposta ta' l-intimat ippresentat fil 21 ta' Jannar 2013 fejn laqa ghal dak mitlub billi qal is-segwenti:

- 1. Preliminarjament, illi l-intimat ghandu jigi liberat mill-osservanza tal-gudizzju billi hu personalment ma kitbe jew ippubblika ebda flyer*
- 2. Preliminarjament ukoll, illi jinkombi fuq ir-rikorrenti li tipprowa min kien l-awtur, l-editur jew il-persuna responsabbli ghall-pubblikazzjoni tal-flyer*
- 3. Minghajr pregudizzju ghall-premess, fil-mertu, illi l-istampat in kwistjoni ma fih xejn ingurjuz u libelluz izda hemm biss l-fehmiet u kummenti tal-awtur tal-pubblikazzjoni dwar diskors ta' kelliem ewlieni ta' partit politiku - kif hu dritt li jsir f'socjeta' demokratika.*

Semghet ix-xhieda ta' Dr Helena Dalli moghtija fit-22 ta' April 2013 u fl-10 ta' Gunju 2013 u rat id-dokumentazzjoni minnha mressqa.

Rat ili fit-22 ta' April 2013 il-partijiet qablu illi l-provi migbura fil-kawza 424/14 fl-ismijiet Dr Helena Dalli vs Tonio Fenech japplikaw ghal kaz odjern ukoll.

Semghet ix-xhieda ta' **Wendy Borg**, prodotta mir-rikorrenti u moghtija fil 15 ta' Novembru 2013.

Semghet ix-xhieda ta' **Dr Marthese Portelli**, prodotta mir-rikorrenti u moghtija fil 5 ta' Mejju 2014 fl-atti tal-kawza 424/14FDP.

Semghet ix-xhieda ta' **Dr Paul Borg Olivier**, prodotta mir-rikorrenti u moghtija fil 5 ta' Mejju 2014 fejn accetta illi l-flyer inhareg mill-“*Campaign Office tal-Partit Nazzjonalista*”.

Rat illi fit 3 ta' Ottubru 2014 l-atti tal-kawza gew assunti minn Dr Chris Said flok Dr Paul Borg Olivier, wara li Dr Said gie mahtur Segretarju Generali tal-Partit Nazzjoanlista.

Rat Press Release mahrug mill-Malta Chamber of Commerce datat 26 ta' Awissu 2014 u esebit mir-rikorrenti fis-26 ta' Jannar 2015 fl-atti tal-kawza 424/14FDP.

Semghet ix-xhieda ta' **Dr Godwin Grima**, gia Principal Permanent Secretary sa Marzu 2013, prodott mir-rikorrenti u moghtija fid 29 ta' Jannar 2015.

Semghet ix-xhieda ta' **Joseph Camilleri**, Segretarju Permanenti fi hdan il-Ministeru ta' Djalogu Socjali, Affarjiet tal-Konsumatur u Libertajiet Civili, prodott mir-rikorrenti u moghtija fil 5 ta' Marzu 2015.

Semghet ix-xhieda ta' **Dr Toni Abela**, moghtija fit 22 ta' Gunju 2015, u rat id-dokumentazzjoni minnu ppresentata.

Rat illi fit 22 ta' Gunju 2015 ir-rikorrenti ddikjarat illi ma kellhiex aktar provi x'tipresenta.

Semghet ix-xhieda ta' Dr Godwin Grima moghtija in kontro ezami u ri-ezami fit 23 ta' Novembru 2015 u rat id-dokumentazzjoni lilu ppresentati waqt ix-xhieda.

Semghet ix-xhieda ta' **Peter Portelli**, gia Segretarju Permanenti fi hdan il-Ministeru tat-Turizmu, Ambjent u Kultura sa Marzu 2013, prodott mill-intimati u moghtija fit 23 ta' Novembru 2013.

Semghet ix-xhieda ta' **Chris Ciantar**, gia Segretarju Permanenti fi hdan il-Ministeru ghar-Rizorsi u l-Affarjiet Rurali sa' Marzu 2013, prodott mill-intimati u moghtija fit 28 ta' Jannar 2016.

Semghet ix-xhieda ta' **Lawrence Bonavia**, moghtija fit 28 ta' Jannar 2016 u fis 7 ta' April 2016 u prodott mill-intimati u rat id-dokumentazzjoni minnu ppresentata.

Semghet ix-xhieda ta' **Emanuel Galea** moghtija fil 11 ta' Lulju 2016 u 16 ta' Marzu 2017 u prodott mill-intimati.

Semghet ix-xhieda ta' **Tonio Fenech** moghtija fit 23 ta' Novembru 2017.

Rat illi fit 23 ta' Novembru 2017 l-intimati ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Rat illi fit 28 ta' Novembru 2017 Clyde Puli assumu l-atti flok Dr Chris Said, wara illi nghata l-inkariku ta' Segretarju Generali.

Semghet il-kontro ezami ta' Tonio Fenech moghtija fil 5 ta' Marzu 2018.

Rat illi fil 5 ta' Marzu 2018 il-kawza giet differita ghas-sottmissjonijiet finali bil-miktub.

Rat is-sottmissjonijiet bil-miktub ta' l-abbli difensur tar-rikorrenti ippresentati fit 23 ta' April 2018.

Rat is-sottmissjonijiet bil-miktub ta' l-abbli difensur ta' l-intimat Tonio Fenech ippresentati fil 31 ta' Mejju 2018.

Rat is-sottmissjonijiet bil-miktub ta' l-abbli difensur ta' l-intimata Louiselle Vassallo ippresentati fl 4 ta' Gunju 2018.

Rat illi fl-4 ta' Gunju 2018 il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta illi, fis 27 ta' Novembru 2012, ir-rikorrenti kienet Membru tal-Parlament fl-Opposizzjoni filwaqt illi l-intimat kien Ministru tal-Finanzi fil-Gvern tal-gurnata.

Jirrizulta illi fiz-zmien illi saru l-fluer illi dwar qiegħda tilmenta r-rikorrenti, il-pajjiz kien ġia fi stat ta' kampanja elettorali wara illi l-Gvern tal-gurnata kien tilef varji voti ta' fiducja u ftit gimghat wara ssejthet elezzjoni generali illi nzammet f'Marzu 2013.

Jirrizulta illi sussegwentement għall-Elezzjoni Generali, il-Partit Laburista, illi tagħha hija Membru r-rikorrenti, kien elett fil-Gvern u r-rikorrenti inharet bhala Ministru ta' Djalogu Soċjali, Affarjiet tal-Konsumatur u Libertajiet Civili.

Jirrizulta illi, għalkemm il-flyer ma kellu ebda indikazzjoni dwar min ippubblikah, fix-xhieda tiegħu mogħtija fil 5 ta' Mejju 2014 (fol 31), Dr Paul Borg Olivier ikkonferma illi kien flyer mahrug mill-Partit Nazzjonalista.

Jirrizulta illi f'tali flyer isiru s-segħenti asserzjonjiet dwar r-rikorrenti li hija hassitha malafamata bihom:

Ftit tal-jiem ilu x-Shadow Minister Laburista Helena Dalli habbret li Gvern Laburista mmexxi minn Muscat jagħmel audit fost il-haddiema tal-Gvern. Il-Labour irid jiddeciedi hu min haqqu jkun fil-post tax-xogħol tiegħek.

u

“Min ma jisthoqlux li jkun hemm se jitnehha”

*Helena Dalli, Shadow Minister Tas-Servizz Pubbliku
25 ta' Ottubru 2012*

Jirrizulta illi r-rikorrenti tikkontendi illi l-intimat għawweg fatti u kliem minnha dikjarati waqt Konferenza Stamo minnha mizmuma f'it jiem qabel in konnessjoni mal-Kampanja Elettorali illi kienet gejjja f'it gimghat wara, liema kliem l-intimat uza bi hsara lejn ir-rikorrent, fejn huwa allega illi hija kienet qalet *“Min ma jisthoqlux li jkun hemm se jitnehha”*, fejn gie insinwat illi min huwa Nazzjonalist jitkecca 'l barra.

Jirrizulta illi tul is-sitt snin illi hadet il-kawza odjerna, ir-rikorrenti qatt ma ppresentat il-kontenut tad-diskors tagħha fil-Konferenza Stampa minnha imsemmija u li fejn, skond ir-rikorrenti, hija qalet kliem li eventwalment intuzaw mill-intimat 'l barra mill-kuntest tagħhom biex jagħmillha hsara.

Jirrizulta illi l-intimat, apparti eccezzjonjiet dwar prova tal-pubblikazzjoni, li giet sorvolata bl-ammissjoni ta' Dr Borg Olivier illi l-flyer gie publikat mill-Partit Nazzjonalista, qajjem bhala eccezzjoni principali dik ta' 'fair comment'.

Ikkunsidrat

In vista ta' tali difiza, ikun iportun illi jitqiesu xi principji generali stabblilit mill-Qrati lokali u esteri dwar tali kuncett.

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:-

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 intqal fil-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kawza **Chauvy and Others vs France** deciza fid 29 ta' Gunju 2004,

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and 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 that 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.

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-esspressjoni, 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 ...

.....

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.*

Fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil 21 ta' Ottubru 2014, intqal is-segwent:

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', imbghad, **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-segwenti :

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jseħhlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jaghti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.

Tali taghlim huwa anke 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 ghamel is-segwenti 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.

Finalment, kif osservat dina l-Qorti, kif ppresjeduta, fil-kawza '**Jesmond Mugliette vs Alfred Sant**'

Din il-Qorti tirrileva wkoll illi wasal il-mument illi tali regola titwessa aktar fis-sens illi meta jkun hemm dibattitu politiku ghaddej bejn politici, tali livell ta' kritika ghadha interpretata f'livell aktar wiesgha minn dak ipprovdut hawn fuq, peress illi d-dibattitu

politiku huwa l-pern ta' socjeta demokratika u, ghalhekk ghandha tigi protetta u stimulata minn dina l-Qorti u mhux imxekkla fl-operat taghha.

Ikkunsidrat

Jirrizulta illi r-rikorrenti hassitha aggravata bil-fatt illi l-flyer jaghmel referenza ghal kliem illi kienet qalet l-istess rikorrenti waqt dibattitu politiku illi sar permezz ta' Konferenza Stampa, meta r-rikorrenti ghamlet referenza ghal “audit tal-haddiema tal-Gvern”, liema audit l-flyer kien jallega li kien qed isir sabiex jigu identifikati persuni illi jhaddnu preferenza ghall-Partit Nazzjonalista u jigu mnehija mill-posizzjoni taghhom.

Jirrizulta, izda, illi r-rikorrent **qatt** ma ppresentat quddiem dina l-Qorti l-kliem illi attwalment qalet l-istess rikorrenti u li, skond hi, gew abusivament utilizzati mill-intimat sabiex jirrekaw danni fil-konfront taghha.

Jirrizulta illi, fix-xhieda taghha, ir-rikorrenti tispjega fir-reqqa l-kuncett ta' “audit” u li dan kien ilu mahsub mis-sena 2011 meta l-Partit Nazzjonalista kienu ghadu fil-Gvern.

Madanakollu, il-Qorti tosserva illi sabiex tkun f'pusizzjoni tevalwa b'mod oggettiv il-kliem illi attwalment ir-rikorrenti kienet uzat u sabiex il-Qorti tkun f'pusizzjoni tivverifika jekk kienx minnu illi tali kliem gew estrapolati mill-intimat u uzati 'l barra mill-kuntest li ghalihom kienu mahsuba jew le, huwa essenzjali u mehtieg illi l-Qorti tara x'attwalment qalet ir-rikorrenti fil-Konferenza Stampa taghha, liema rappurtagg ir-rikorrent qatt ma ressqet quddiem dina l-Qorti.

Ikkunsidrat

Jirrizulta, mill-provi prodotti quddiem il-Qorti, illi l-intimat tellghu bhala xhieda varji persuni, li kienu jinkludu zewgt ex-Segretarji Permanenti, Chief Nursing Manager u Human Resources Manager, illi lkoll xehdu quddiem il-Qorti illi, wara li tela fil-Gvern il-Partit Laburista, in vista tal-fatt illi huma kellhom preferenza ghall-Partit Nazzjonalista u kienu involuti f'tali partit, gew rimossi minn tali karigi u moghtija karigi ta' responsabbilta ferm anqas minn dawk illi kellhom qabel.

Jirrizulta illi l-argumentazzjoni maghmulha fil-flyer juri kumment politiku illi l-flyer kien qieghed jaghmel dak iz-zmien, fejn kien qieghed jigi allegat illi jekk jitolghu l-Partit Laburista fil-gvern, persuni ta' thaddin Nazzjonalista jitnehew u jitqiedu biss persuni ta' thaddin Laburista.

Jirrizulta, mill-provi prodotti mill-intimat, illi tali assersjoni hija sostanzjalment korretta filwaqt illi ghandha ukoll titqies bhala kumment politiku illi dejjem isir bejn iz-zewgt partiti fil-girja ta' qabel elezzjoni generali, u li certament ma jistghu qatt jitqiesu bhala kummenti malafamanti fil-konfront tar-rikorrenti.

Ikkunsidrat

Il-Qorti, qabel ma tghaddi ghas-sentenza, ma tistax ma tesprimix d-disappunt taghha lejn il-partijet illi hadu aktar minn sitt snin sabiex jippresentaw il-provi taghhom, haga illi ma taghmel ebda gieh lill-process gudizzjarju, illi jisthoqq illi jkun wiehed efficjenti, effettiv u spedit – iz-zewgt partijiet ghamlu l-ghalmu taghhom biex jiddilungaw il-kawza, u dana ser jigi rifless fil-kap ta' l-ispejjez.

Konkluzjoni

Il-Qorti ghalhekk,

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimati, u ghalhekk

Tichad it-talbiet attrici.

Kull parti ghandha tbaghti l-ispejjez taghha.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur