



MALTA

# FIL-QORTI TAL-MAGISTRATI TA' MALTA

**Magistrat Francesco Depasquale**

LL.D. LL.M. (IMLI)

**Ilum it-Tnejn, 26 ta' Novembru 2018**

Rikors Numru 347/2017

**Jean Claude Micallef**  
(ID 347187M)

vs

**Emanuel Delia**  
(ID 560176M)

Il-Qorti,

## 1. Premessi

1. Rat ir-rikors promotur ippresentat fit-28 ta' Novembru 2017 fejn ir-rikorrenti talab lill-Qorti tikkundanna lill-intimat:

*prevja dikjarazzjoni illi int responsabbli għall-pubblikazzjoni fis-sit elettroniku Manuel Delia - Manuel Delia's notes' ta' malafama u libell, jew talli ppermettejt l-istess, fil-konfront tar-rikorrent, minhabba kummentarju ppubblikat fil-blog entitolat "**When hypocrisy is transparent**" kif jidher fl-anness Dok 'A' li gie ppubblikat nhar it-8 ta' Novembru 2017, li kien malafamanti u libelluz u ntiz sabiex itellef jew inaqqas ir-reputazzjoni u l-unur ta' l-istess rikorrenti kif ser jirizulta ahjar waqt it-trattazzjoni tal-kawza; thallas lir- rikorrenti in linea ta' danni dik is-somma li tigi likwidata mill-Onorabli Qorti tal- Magistrati (Malta) ai termini tal-Art. 28 tal-Kapitolu 248 u dan bir-riserva għall-kull dannu ulterjuri li jistgħu jigu subiti. Bl-ispejjez u bl-imghax skond il-ligi kontral- intimat li minn issa hija ngunta in subizzjoni.*

2. Rat ir-risposta ta' l-intimati ippresentata fis-6 ta' Dicembru 2017 fejn laqa ghal dak mitlub billi qajjem is-segwenti difizi:

*Illi l-kummentarju de quo ma jikkostitwix malafama skond il-Ligi peress illi:*

*Fl-ewwel lok mhux libelluz*

*Fit-tieni lok mehud fil-kuntest proprju tieghu huwa 'fair comment' u ghalhekk accettabbli f'socjeta demokratika kif jigi muri waqt is-smiegh.*

*Ghaldaqstant, ir-rikors ghandu jkun michud bl-ispejjez.*

## 2. Provi

1. Semghet ix-xhieda in exami u kontr-ezami ta' **Jean Claude Micallef** moghtija fil 15 ta' Frar 2018 u rat id-dokumentazzjoni minnu ppresentata, ossija l-artikolu imtella fuq is-sit [www.manueldelia.com](http://www.manueldelia.com) intitolat '**When hypocrisy is transparent.**'
2. Rat l-artikolu meritu tal-kawza odjerna, datat **8 ta' Novembru 2017**, imtella fit 8.58am, illi jghid dan li gej:

*Jean Claude Micallef is not famous for his consistency. He flipflopped between Labour and the PN according to where he thought his chances for career progression were better served. The PN first received him as parties habitually welcome sheep lost by the other side. But as his oily sleaze ran up the creeped-out collective spines of a rather more selective generation of candidate shortlisters, he found he could not use the PN to advance himself.*

*Back he went to Labour. Where he belonged all along. And in the callous, unprincipled indifference to right or wrong that makes him, here he is, pretending to be shocked by Daphne Caruana Galizia's assassination. Here he is, a few hours after the news broke, reading from the prime minister's hymn book feigning sadness and calling for 'unity', for which read oh do shut up about this.*

*Look at the hashtags at the bottom of his post: #rip #NinghaqduKontraVjolenza #LeGhallHdura. "Rest in Piece". "Let's Unite Against Violence". "No to cruelty". I admit a slight uncertainty on the translation of "hdura". Native speakers will know what he means.*

*Here he is all of 2 weeks later no longer interested in the victim of the first ever targeted political assassination in the country in peace-time, no longer interested in the victim resting in peace, in unity against violence and, much less, in putting aside hdura.*

*He withdraws his respect given so melodramatically two weeks before. And he exchanges all those empty unintended words for, literally, "tkasbir". I had to confirm that with a dictionary. He vilifies the victim. He condemns the victim. He states he despises the victim.*

*This is the extent of the hate, the ħdura, a PL general election candidate professes. These are the words of a TV ‘personality’ (for so we call the empty vessels on our public broadcasting) about a journalist who has been blown up in a car bomb.*

*Any self-respecting media house in the known universe would have kicked his butt by now after posting such venom on his Facebook. But this is TVM we’re talking about and this, as she so rightly said, is no normal democracy.*

*Take the time to scroll through the heroes who tickled his hungry ego by ‘liking’, ‘commenting’ and ‘sharing’ this piece of hate literature that would have made the soldier with the spear on the Golgotha blush in embarrassment.*

*For your viewing pleasure here’s a screenshot of the Labour Mayor of Żurrieq congratulating Jean Claude Micallef. “Bravu” he calls him because that is the sweetest praise he can come up with. Here’s a man who went on TV while the charred soil where Daphne’s body was consumed was still warm, to announce to loud applause he was giving a kidney to his friend. He spoke of Christian charity and loving thy neighbour.*

*And then he proceeded to applaud a colleague slime-ball of his, fellow leader of the masses, for leading the vilification of a journalist who was brutally killed for selflessly serving her country. I wish for Mayor Natius Farrugia to live a long life and die in his old age with his loved ones around him mourning him and thanking him on behalf of all of us for his great service to the community. He gives me the creeps and right now I could hardly feel angrier at anyone, but it doesn’t mean I could ever bring myself to rejoice in his or anyone’s untimely death.*

*Jean Claude Micallef leads his crowds of fans, and follows them, in an orgy of hate from which it seems we will never recover. We are truly facing a crisis of irreconcilable differences widening the gap between these two Malts. Human compassion, basic decency stops at politics. Look at Jean Claude Micallef here mouthing inanities about charity but only really interested in a political photo-op with the prime minister’s*

*I could spend all day posting links to revolting hate posts. To be honest it is my duty to do so because showing this sickening collective psychology to a nation that does not want to admit it is the first duty of a journalist.*

*But this tires me so.*

3. Rat il-post imtella mir-rikorrent fuq il-pagna personali tieghu stess fuq is-sit soċjali Facebook fis **16 ta’ Ottubru 2017** mtella fit 20.47pm u imsemmi u ppubblikat mill-intimat fl-artikolu tieghu, ossija s-segwenti:

*Dejjem ikkundannajt il-vjolenza fi kwalunkwe forma mhux biss ghax nemmen li kull azzjoni jkollha reazzjoni ekwa imma ghaliex nemmen fil-liberta' u fil-politika ta' perswazjoni mhux dik tal-perversjoni.*

*Bhal diversi ohra, kont suggett ta' tkasbir f'kitbiet minn Daphne Caruana Galizia bhala strument ghal klikka partikolari.*

*Kif dejjem kellimtha meta Itqajna wicc imb'wicc dejjem qbilna fuq id-dritt tal-espressjoni imma qatt favur il-firda jew xi forma t'ingustizzja.*

*Bl-istess principju huwa xokkanti dak li gara llum fuq kull livell. Fuq livell personali, nibghat il-kondoljanzi lil familja Caruana Galizia ghat-telfa tal-ghaziza taghhom. Fuq livell pubbliku, nithasseb jekk noftmu l-persuna mill-personagg fl-analizi taghna. Fuq livell socjali nheggeg biex l-ghaqda nazzjonali tirrenja.*

*Tlifna Maltija b'att barbaru li ghax ahna demokratici u umami jimlina b'dieqa. Nistennew Il-Gustizzja ghalina lkoll filwaqt li nixtieq kuragg lil familja Caruana Galizia.*

*#rip #NinghaqduKontraVjolenza #LeGhallHdura*

4. Rat il-post imtella mir-rikorrent fuq il-pagna personali tieghu stess fuq is-sit socjali Facebook fit **2 ta' Novembru 2017** u imsemmi u ppubblikat mill-intimat fl-artikolu tieghu, fejn b'tipa kbira ir-rikorrenti ghamel is-segwenti dikjarazzjoni:

*Jekk tghix hajtex tkasbar, tmut imkasbar.  
Ir-rispett tirbhu tul hajtek mhux wara mewtek.*

5. Rat il-hmistax il-kumment, riprodotti fl-artikolu meritu tal-kawza odjerna, u illi kienu saru lir-rikorrent taht il-post tieghu imtella fit 2 ta' Novembru 2017, li kienu jghidu s-segwenti: (fol 51)

**Tessie Caruana:** Prosit tassew.

**Christian Farrugia:** Well said!

**Rita Baldacchino:** Well said

**Rosalie Ellul:**



**Noel Camilleri:** Great words Jean Claude

**Bjorn Azzopardi:** Spot on siehbi.

**Nicolette Mallia:** Ek huu

**Gordon Pace:** Skont ghal xiex tkasbar. Pero, iva, r-rispett jigi ggwadanjat.

**Natius Farrugia:** Bravu

**Charlene Bugeja:** Kliem tad deheb !

**Tonio Dowdow Agius:** TIDHER LI DEMMEK GHAXQI KEMM TAF XI TEJD

**Manuel Cumbo:** Well said

**Erika Mangion:** Spot on !!!

**Brian Xuereb:** Well said. Champagne

**Pietru Pawl Gatt: Spot on**

6. Rat illi l-kumment tat 2 ta' Novembru 2017 intlaqa b'approvazzjoni minn 276-il persuna u gie mxerred 68 darba fuq is-sit docjali 'Facebook'.
7. Rat il-post imtella mir-rikorrent fuq il-pagna personali tieghu stess fuq is-sit socjali Facebook fil **21 ta' Ottubru 2017** u imsemmi u ppubblikat mill-intimat fl-artikolu tieghu, fejn hdejn ritratti ta' attivita' mtella minn Pink October fejn jidhru gemgha tfal u zghazagh u fosthom s-sinjura Michelle Muscat, mart il-Prim Ministru, ir-rikorrent u Jeffrey Pullicino Orland, kiteb is-segwenti:

*Is-sabih ta' dan il-poplu huwa li xemx jew xita fejn tidhol l-ghaqda u s-support lil min jinhtieg, nqumu ghall-okkazzjoni.*

*Kburi li ghal sena ohra kont parti minn din l-attivita' success.*

*Prosit lis-Sinjura Muscat u l-Fondazzjoni Marigold flimkien mal-Esplora.*

8. Rat illi fit 12 ta' April 2018 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.
9. Semghet ix-xhieda in kontro ezami tar-rikorrent moghtija fl-10 ta' Mejju 2018.
10. Semghet ix-xhieda in ezami ta' l-intimat **Emanuel Delia** moghtija fil-21 ta' Gunju 2018 u rat id-dokumentazzjoni minnu ppresentata, ossija l-post imtella mir-rikorrenti fit 2 ta' Novembru 2017, fuq gia msemmi.
11. Semghet ix-xhieda in kontro ezami ta' l-intimat **Emanuel Delia** moghtija fit-18 ta' Ottubru 2018 u rat id-dokumentazzjoni minnu ppresentata, ossija artikolu intitolat 'Guidelines on the Obligation of Due Impartiality' miktub minn Dr Kevin Aquilina. (fol 66)
12. Rat illi fit 18 ta' Ottubru 2018, il-partijiet ddikjaraw illi ma kellhomx aktar provi u li l-kawza setghet tithalla ghat-trattazzjoni finali.
13. Semghet it-trattazzjoni finali tal-abbli difensuri tal-partijiet illis aret fit 8 ta' Novembru 2018, wara liema trattazzjoni il-kawza giet differita ghas-sentenza ghallum.

### **3. Konstatazzjonijiet fattwali.**

1. Jirrizulta illi r-rikorrent huwa persuna pubblika, fejn fil-present huwa Xandar tat-Telivision filwaqt illi kien ukoll Kandidat ghall-Elezzjoni Generali ghall-Partit Laburista fl-elezzjoni precedenti, u fil-passat kien jimmilita wkoll fl-Partit Nazzjonalista.
2. Jirrizulta illi fis-16 ta' Ottubru 2017 kmieni wara nofsinhar, Daphne Caruana Galizia sfat maqtula b'bomba mqieghda fil-karozza taghha hekk kif harget mid-dar taghha, liema qtil kien qajjmet reazzjoni kbira dakinhar u fil-jiem u gimghat ta' wara, fejn kemm hi personalment kif ukoll il-kitbiet taghha kien is-suggett ta' hafna kummenti, kemm positivvi kif ukoll negattivi, liema reazzjonijiet u kummenti ghadhom ghaddejjin sal-gurnata ta' llum.
3. Jirrizulta illi ffit sieghat wara il-mewt ta' Daphne Cruana Galizia, ir-rikorrent tella post fejn ikkundanna l- "*att barbaru*" illi sar dakinar u qal illi ghalkemm "*kont suggett ta' tkasbir*"

*f’kitbiet minn Daphne Caruana Galizia” dak li kien sehħ giet minn deskritt bhala “xokkanti dak li gara” u “fuq livell personali, nibghat il-kondoljanzi lil familja Caruana Galizia”.*

4. Jirrizulta illi fit 2 ta’ Novembru 2017, f’it aktar minn gimghatejn wara illi tella tali post, ir-rikorrent, li regolarment itella posts fuq is-sit soċjali tiegħu, tella post fejn għamel is-segwenti assersjoni: *“Jekk tghix hajtek tkasbar, tmut imkasbar. Ir-rispett tirbhu tul hajtek mhux wara mewtek”.*
5. Jirrizulta illi daka il-kumment gab l-approvazzjoni ta’ mhux anqas minn 276-il persuna, filwaqt illi hmistax-il persuna kkummentaw favorevolment u kkongratulaw lir-rikorrent tal-assersjoni tiegħu, fejn nies qalulu, fost affarjiet ohra *“Prosit tassew”, “Well said”, “spot on”, “bravu”, “Kliem tad-deheb”* u kumplimenti ohra.
6. Jirrizulta illi rizzultat ta’ tali kumment, l-intimat Manuel Delia, illi għandu sit elettroniku tiegħu intitolat [www.manueldelia.com](http://www.manueldelia.com) fejn huwa jtellha ‘blogs’ u artikoli tiegħu u ta’ terzi kontributori li sussegwentement huma suggetti għall-kummenti mill-qarrejja, tella ‘blog’ fit 8 ta’ Novembru 2017 intitolat **‘When hypocrisy is transparent’** li fih l-intimat għamel varji assersjonijiet u kummenti fil-konfront tar-rikorrent.
7. Jirrizulta illi r-rikorrent hassu malafamat b’dak illi inkiteb u, f’it jiem wara, nieda l-proceduri odjerni.
8. Jirrizulta illi, fix-xhieda tiegħu, ir-rikorrent kellu dan xi jghid dwar dak illi inkiteb: (fol 15)

*Mela, out of the blues, is-Sur Manuel Delia fetah blog tiegħu u f’dan il-blog insinwa diversi titli xejn sbieħ fil-konfront tiegħi, fosthom illi ipokrita, fosthom ukoll accenna illi jiena xerridt xi forma ta’ hate speech, u apparti minn hekk ukoll, mar oltre minn hekk għaliex rajtha dannuza fejn beda jirrimarka li għandi nitkecca mix-xandir għaliex b’xi mod ivvilifikajt u anke fil-kitbiet tiegħi, fl-istatuses tiegħi fuq facebook, urejt certu mibgheda fil-konfront tas-Sinjura Daphne Caruana Galizia, l-iktar mod li ma stajtx nifhem hu kif prova jallacca kummenti tiegħi fuq facebook fejn tajt il-kondoljanzi lil familja Caruana Galizia, u imbagħad prova idawwarhom b’mod, igifieri qabad status iehor, hekk minn jeddu, u għal xi raguni dan allaccjah mas-Sinjura Daphne Caruana Galizia.*

9. Jirrizulta illi, fix-xhieda tiegħu, l-intimat iddifenda lilu nnifsu billi qal is-segwenti:

*Jiena li assrejt huwa li Jean Claude Micallef għamel zewg kummenti kontrastanti fis-siġhat u fil-granet ta’ wara li nqatlet Daphne Caruana Galizia. (fol 44)*

*Kieku dan il-kumment sar kwalunkwe gurnata qabel il-15 ta’ Ottubru, kien ikun qisu kwotazzjoni, jien naf minn dawn li jippubblikaw statement minn Confucius u jagħmluh tagħhom. Imma l-kuntest taz-zmien meta kien ippubblikat kien inevitabbli għaliex u għal kull min qraħ illi qisu bhala referenza diretta għal Daphne Caruana Galizia u kumment totalment inkonsistenti mas-sentimenti li esprima immedjatament wara mewtha. U jien fil-kummentarju tiegħu u fl-osservazzjoni tiegħi għamilt l-osservazzjonijiet għar-ragunijiet għal din l-inkonsistenza illi immedjatament wara l-qtil ta’ Daphne Caruana Galizia, is-Sur Micallef irreagixxa kif haseb li għandu jirreagixxi kulhadd u kif dak il-hin kulhadd pubblikament kien ged jirreagixxi. Imma sa f’it granet wara l-burdata f’sezzjoni tal-popolazzjoni illi kienet tinteressa lis-Sur Micallef kienet bdiet*

*tinbidel u beda jsir l-argument, illi jiena nirrifjuta bl-aktar mod kategoriku, illi Daphne Caruana Galizia immeritat il-mewt tagħha.*

#### 4. Konsiderazzjoni Legali

1. Jirrizulta illi d-difiza ta' l-intimat hija msejsa fuq l-argument illi l-pubblikazzjoni kienet 'fair comment' u għalhekk sostanzjalment korretti.
2. Dwar id-difiza principali ta' 'fair comment', ikun iportun illi jitqiesu xi principji generali stabbilit mill-Qrati lokali u esteri dwar tali kuncett.
3. Kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, il-politiku, kif ukoll, din il-Qorti tikkontendi, persuna pubblika illi tippresenta servizz fil-komunita' illi tista tagħtiha pjattaforma li tista tintuza għall-involviment tagħha fil-politika, bhal fil-kaz tar-rikorrent, huwa soggett għall-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.*

4. Kif intqal fil-Qorti Ewropea għad-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.*

5. 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 ...*

.....

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.*

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

*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.*

7. 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."*

8. 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.*

9. Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal is-segwent:

*... 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 għustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preciz li jwegga' lil dak li jkun.*

10. 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-segwent 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.*

11. 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.*

## 5. Konsiderazzjonijiet Finali

1. Jirrizulta, mill-provi prodotti illi, r-rikorrent ma huwiex biss xandar tat-televizjoni, izda huwa wkoll persuna politika, stante illi huwa kien ukoll kandidat tal-Partit Laburista fl-elezzjoni ta' Gunju 2017, ossija f'it zhur qabel ma gew ippubblikat il-*'posts'* illi dwarhom ikkummenta l-intimat u li wasslet ghall-kawza odjerna.
2. Jirrizulta illi, dakinhar tal-qtil ta' Daphne Caruana Galizia, ir-rikorrent espriema s-soghba tieghu ghal dak illi gara u kkundanna il-vjolenza tal-akkadut, u dana billi ppubblikah fuq il-pagna tieghu fuq is-sit socjali Facebook.
3. Jirrizulta, izda, illi f'it aktar minn gimgatejn wara, fuq l-istess pagna tieghu, huwa ghazel illi jtella kumment fejn ddikjara lill kullhadd li "*Jekk tghix hajtek tkasbar, tmut imkasbar. Ir-rispett tirbhu tul hajtek mhux wara mewtek*"
4. Jirrizulta illi tali dikjarazzjoni saret fl-isfond ta; dak kollu illi kien qieghed isehh dak iz-zmien fil-pajjiz, ossija dskussjoni u dibattiti shah dwar il-qtil ta' Daphne Caruana Galizia, fejn il-kitbiet u l-agir taghha kien suggett ghall-opinjonijiet divergenti, fejn uhud bdew jidolizzawha filwaqt illi ohrajn bdew jiddimonizzawha.
5. Jirrizulta illi r-rikorrent, kien gia indika, fil-post tieghu, illi huwa kien "*suggett ta' tkasbir f'kitbiet minn Daphne Caruana Galizia bhala strument ghal klikka partikolari*"
6. Jirrizulta, ghalhekk, illi l-fatt illi r-rikorrent ghazel illi, fil-post tieghu tat 2 ta' Novembru 2017, li jutilizza l-kelma "*tkasbar*" fl-assersjoni tieghu, meta f'it jiem qabel kien asserixxa wkoll illi huwa kien "*suggett ta' tkasbir f'kitbiet minn Daphne Caruana Galizia*" setghet facilment tigi interpretata bhala illi kien qed jaghmel il-kumment tieghu tat 2 ta' Novembru 2017 fil-konfront ta' Daphne Caruana Galizia u l-hajja taghha.
7. Jirrizulta illi ghalkemm ir-rikorrenti jikkontendi u jinsisti illi tali kumment ma kienx fil-konfront ta' Daphne Caruana Galizia, huwa car, kemm mill-isfond u atmosfera li kien hemm fil-pajjiz dak iz-zmien illi ntqal tali kumment, fejn il-qtil ta' Daphne Caruana Galizia w l-investigazzjonijiet kienu dejjem fuq il-mezzi tax-xandir bi prominenza, kif ukoll mil-kummenti tas-segwaci tar-rikorrent fuq il-pagna tas-sit socjali tieghu, fejn gie kkongratul

tal-kumment tieghu b'approvazzjoni, illi tali kumment inftiehem li kien dirett lejn Daphne Caruana Galizia w il-hajja taghha.

8. Jirrizulta illi kienet rizultat ta' tali percezzjoni illi setghet tat il-kumment tieghu, illi l-intimat ghamel il-kummenti tieghu fil-konfront tar-rikorrenti.
9. Jirrizulta, ghalhekk, illi l-intimat kien korrett jasal ghal tali konkluzjoni, anke jekk ir-rikorrent jinsisti li l-kummenti ma kienux fil-konfront ta' Daphne Caruana Galizia, ghax il-percezzjoni moghtija lill-qarrejja fil-mument tal-pubblikazzjoni setghet ma kienetx dik illi jikkontendi r-rikorrent, u ghalhekk ghandhom jitqiesu bhala 'fair comment' il-kummenti ta' l-intimat dwar il-posizzjoni mehudha fil-pubbliku mir-rikorrent, illi huwa persuna pubblika kif ukoll politika b'numru konsidervoli ta' segwaci fuq il-pagna tieghu fuq is-sit socjali Facebook.
10. Il-Qorti, hawnhekk, ma tistax ma taghmilx referenza ghal dak illi din il-Qorti stess qabel fil-kawza '**Charmaine Martin vs Jasmine Urry**' deciza fit 12 ta' Novembru 2018, fejn qalet is-segwenti:

*Il Qorti, ghal darba ohra, ma tistax ma tesprimix it-thassib serju taghha dwar kien qieghed jintuzaw l-pjattaformi tal hekk-imsejja "social media", bhalma hija Facebook, fejn, aktar ma jghaddi z-zmien, aktar jidher illi dawn qed ikunu ghodda ta' tghajjir u tkasbir ta' individwi da parte ta' persuni illi jkunu jridu jifgħu dawl ikrah fuq individwu jew individwi ma' grupp ta' persuni jew, sahsitra, mad-dinja kollha.*

*Sfortunatament, jidher illi flok ma' tali mezzi qed jintuzaw sabiex jghaqqdu n-nies flimkien, dawna qieghdin jintuzaw sabiex joholqu aktar disgwid u mibgheda bejn gruppi ta' nies u qed iwasslu ghal estremizmu fl-ideat u veduti ta' persuni, bil-possibilita' ta' azzjonijiet perikoluza bhala rizultat ta' tali estremizmu, liema zvilupp ma jaghmel ebda gid lil socjeta demokratika, illi hija bbazata fuq il-pluralizmu u skambju liberu ta' veduti, u li tenhtieg id-diskussjoni libera u franka bejn kullhadd u rispett lejn l-opinjonijiet ta' kullhadd sabiex d-demokrazija tkun tista tirnexxi u tistaghna.*

*Jenhtieg illi kullhadd jgharraf il-hsara illi tali mezzi qed jikkreaw illum il-gurnata u jifhmu li huwa biss bl-edukazzjoni fil-mod kif jintuzaw tali mezzi u rispett lejn xulxin illi s-socjeta demokratika, bhalma hija dik Maltija, tista timxi l'quddiem.*

11. Il-Qorti tosserva ukoll illi persuni politici u pubblici ghandhom ikunu ta' eżempju ghac-cittadini w is-segwaci taghhom fuq is-sit socjali taghhom u ghandhom jgharrfu l-konsegwenzi ta' kull ma jghidu fejn ghandhom jifhmu illi l-mod dwar kif jagixxu u jesprimu ruhhom pubblikament u fuq il-mezzi socjali jista facilment jheggeg lill-ohrajn jaghmlu bhalhom u jitqies accettabbli, u ghalhekk jinkombi l-obbligu fuq tali persuni politici u pubblici illi jassikuraw li jkunu huma stess eżempju positiv lill kullhadd sabiex, fi kliem ir-rikorrent stess fil-post tieghu tas-16 ta' Ottubru 2017, "*fuq livell socjali nheggeg biex l-ghaqda nazzjonali tirrenja*".

## 6. Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi semgħet is-sottomissjonijiet ta' l-abbli difensuri taz-zewgt partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tilqa** l-eccezzjonijiet tal-intimat, u għalhekk

**Tichad** it-talba attrici

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

**Magistrat Francesco Depasquale**

**Rita Sciberras**  
Deputat Registratur