FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta taʹ nhar il-Hamis ghaxra (10) taʹ Jannar 2019

Rikors Numru 136/16 FDP

L-Onorevoli Claudio Grech
(ID 392174M)

vs

Aleander Balzan
(ID 586485M)

Il-Qorti:-

1. Premessi

1. Rat ir-rikors promotur ippresentat fis-17 ta' Gunju 2016 fejn ir-rikorrent talab is-segwenti:

   1. Prevja d-dikjarazzjoni li l-artikolu li jibda f'pagna 1 fil-harga ta' l-"Kullhadd" tat-12 ta' Gunju 2016, u b'mod partikolari t-titolu tal-artikolu "Jipprova jsikket whistleblower" (Dok A) ta' liema gazzetta inti l-editur - huwa libelluz u malafamanti billi jikkontjeni allegazzjonijiet foloz li ghandhom bhala skop li jtellfu jew inaqqsu r-reputazzjoni tieghu; u

   2. jhallas lill-intimat dik is-somma li tistabilixxi din il-qorti bhala danni morali a tenur tal-Art. 28 tal-Kap 28 (Ligi dwar l-Istampa)

2. Rat illi l-intimat, debitament notifikat, fis 27 ta' Gunju 2016, sas-sedut tal-31 ta' Ottubru 2016 naqas illi jippresenta risposta.

3. Rat illi fl-20 ta' Marzu 2017, wara illi gie awtorizzat mill-Qorti fit 13 ta' Marzu 2017, l-intimat ippresenta r-risposta tieghu fejn laqa ghal dak mitlub billi qajjem s-segwenti difizi:

   1. *Illi fl-ewwel lok, l-artiklu allegatament malafamanti u libelluż jikkoncerna fatti svelati minn sorsi affidabbli wara investigazzjoni gurnalistika xierqa li principalment tikkonsisti f'riproduzzjoni ta' stqarrija moghtija taht gurament u bhala tali tikkostitwixxi dokument pubbliku u awtentiku ai termini tal-artikolu 627 (e) tal-Kap. 12 tal-Ligijiet ta' Malta;*

   2. *Illi fit-tieni lok, u bla ebda pregudizzju ghall-premess, I-esponent mhux biss ghandu d-dritt iżda ghandu d-dmir li jinforma l-pubbliku dwar kwistjonijiet ta' interess pubbliku u politiku, u kwalsijasi limitazzjonijiet ghat-tali jedd jikkostitwixxu ksur tad-drittijiet fondamentali tieghu, ossija d-dritt tal-liberta tal-espressjoni u l-liberta gurnalistika in generali;*

   3. *Illi fit-tielet lok, u bla ebda pregudizzju ghall-premess, l-artikolu in kwistjoni jitratta fatti w kummenti ta' natura socjali u politika, rigwardanti persuna politika, u ghalhekk huma fl-interess generali u pubbliku u jikkostitwixxu "fair comment" f'socjetà demokratika, u dan kif ser jigi ppruvat;*

   4. *Illi fir-raba lok, u bla ebda' pregudizzju ghall-premess, ir-rikorrenti ghandu f'kull każ jipprova l-hsara li huwa sofra ghar-reputazzjoni tieghu in bazi tal-artiklu allegatament malafamanti u libelluż;*

   5. *Salv eccezzjonijiet ulterjuri.*

2. Provi

1. Rat l-artikolu meritu tal-kawza odjerna, ppubblikat fil-faccata tal-gurnal Kullhadd u jkompli f'pagna sitta fejn, fuq ritratt tar-rikorrent Claudio Grech, jidher titolu li jghid "**IPPROVA JSIKKET *WHISTLEBLOWER***" u taht jibda l-artikolu li jghid is-segwenti:

   Id-deputat Nazzjonalista Claudio Grech lejlet l-elezzjoni kien mar ifittex lin-neputi ta' George Farrugia, Chris Farrugia, biex dan jiddiżassocja ruhu mill-istorja dwar l-iskandlu taż-żejt. Claudio Grech u kollega fis-segretarjat privat ta' Austin Gatt, Bernard Pace, kienu marru jfittxu lil Chris Farrugia b'dan tal-ahhar ighidlu li kien "qed jaghmel hsara kbira lil Austin Gatt".

   Din l-istqarrija fuq id-Deputat Nazzjonalista tinsab quddiem il-Qorti fi stqarrija b'gurament li giet impoggija fil-Qorti minn Chris Farrugia nniffsu.

   Fil-pagna sitta tal-gurnal, taht it-titolu '**CLAUDIO GRECH F'POSIZZJONI SKOMDA**', l-artikolu jkompli jghid dan li gej:

   B'gurament Chris Farrugia qal: "Kien hemm talba minn Bernard Pace biex niltaqghu. Gie l-ufficcju u qalli li qed naghmel hsara kbira lil Austin Gatt u qalli

isfel f'karrozza kien hemm Claudio Grech li kien maghruf maghna ghax kien mill-Hamrun u kien haga wahda ma' Austin Gatt.

Grech talabni biex jiena niddiżassocja ruhi mill-istorja, u jien irrifjutajt. Fakkartu li dak li nkiteb kien fid-dominju pubbliku. Fakkartu wkoll li ahna familja Nazzjonalista kbira u meta kellna bzonn li tifhmuna minflok qbiżtu ghal George Farrugia."

Din l-istqarrija titfa' lil Claudio Grech posizzjoni skomda hafna fejn iddefenda lil Austin Gatt imma, aghar minn hekk, ipprova jsikket membru tal-familja Farrugia biex ma jkomplux johorgu dettalji godda dwar l-iskandlu taz-żejt.

Ghal dan l-affidavit, li tressaq fil-Qorti nhar il-Hamis li ghadda, il-Kap tal-Partit Nazzjonalista Simon Busuttil ma ta l-ebda reazzjoni minkejja li membru parlamentari tieghu jissemma b'mod daqstant car.

Chris Farrugia jghid ukoll li zijuh, li ammetta li xahham fix-xiri taż-żejt, kien gideb kontra hutu. George Farrugia kien inghata mahfra presidenzjali mill-Prim Ministru Lawrence Gonzi meta Simon Busuttil kien sar Deputat Kap ta' Gonzi.

Fl-istess affidavit, Chris Farrugia jiżvela wkoll kemm George Farrugia kien qrib il-Ministru tal-Enemalta Austin Gatt u li, apparti li kienu jieklu flimkien, George kien ta' donazzjonjiet ghall-kampanja tal-eks-Ministru, kien jghinu billi jaghtih il-BMWs ghall-kampanja u anke sala tal-familja Farrugia.

"Irrid nghid li Farrugia kien middle-man, kien juża l-hbiberija man-nies, inkluż dawk ma' Austin Gatt jew vicin tieghu, biex jasal fejn ghandu jasal. Kien juża l-familjarità biex jiehu dak li ghandu jiehu. U fil-każ ta' Austin Gatt, u aktar tard Tonio Fenech, biex ikun jaf x'ged jigri f'dan il-qasam," stqarr bil-gurament Chris Farrugia.

2. Semghet ix-xhieda tar-rikorrenti **Claudio Grech** moghtija fit-12 ta' Jannar 2017 u rat id-dokumentazzjoni minnu ppresentati inkluz l-affidavit tieghu datat 13 ta' Gunju 2016 (Dok CG 3) u l-affidavit ta' Christopher Farrugia datata 9 ta' Gunju 2016 (Dok CG 9) li abbazi tieghu l-gazzetta Kullhadd kitbet l-artikolu meritu tal-kawza odjerna.

3. Rat illi fid 9 ta' Marzu 2017 ir-rikorrent talab illi jigi ammess jippresenta recording ta' laqgha illi kienet saret bejnu u bejn persuni ohra, inkluz Christopher Farrugia, sabiex jikkonferma l-veracita tal-partijiet tad-diskors illi r-rikrorent kien esebixxa in atti meta xehed fit 12 ta' Jannar 2017.

4. Rat illi l-intimat oggezzjona ghal tali talba permezz ta' risposta datata 20 ta' Marzu 2017.

5. Rat illi l-meritu tar-rikors gie ttrattat mill-abbli difensuri tal-partijiet fil 25 ta' Mejju 2017 u fl-10 ta' Lulju 2017 dina l-Qorti awtorizzat li r-recording tal-laqgha u t-traskrizzjoni taghha jigu esebiti.

6. Rat illi t-traskrizzjoni giet ippresentata fit-30 ta' Novembru 2017 fl-atti tal-kawza 137/2016 fl-ismijiet 'Dr Claudio Grech vs Dr Joseph Muscat' illi kienet miexja flimkien mal-kawza odjerna sakemm eventwalment giet ceduta mir-rikorrent, liema traskrizzjoni ma gewx inseriti

fil-process izda inzammew fis-sigrieta ghall-protezzjoni tal-informazzjoni moghtija waqt tali diskussjoni.

7. Rat illi minn harsa lejn tali traskrizzjoni, jidher illi l-partijiet esebiti mir-rikorrent fix-xhieda tieghu, ossija Dok CG 6, CG 7 u CG 8, huma verament traskrizzjoni fidili ta' dak illi ntqal.

8. Rat illi fit 30 ta' Novembru 2017 il-kawza kienet differita ghall-provi intimati.

9. Semghet il-kontro ezami tar-rikorrent Claudio Grech illi saret fil-5 ta' Marzu 2018 fl-atti tal-kawza 137/16 fuq imsemmija u li giet tifforma parti mill-atti odjerni wkoll.

10. Rat illi tul il-proceduri odjerni, l-intimat qatt ma deher u qatt ma ressaq provi w il-Qorti, fil 21 ta' Mejju 2018, wara erbgha seduti ghall-provi intimati fejn la deher l-intimat u wisq anqas ma ressaq provi, u fejn sar biss il-kontro ezami ta' Claudio Grech fl-atti ta' kawza illi kienet miexja flimkien mal-kawza odjerna, il-Qorti ghaddiet biex iddikjarat l-istadju tal-gbir tal-provi bhala maghluqa.

11. Rat illi fil 5 ta' Lulju 2018 il-kawza giet differita ghas-sottomissjonijet finali bil-miktub taz-zewgt partijiet ghad-29 ta' Ottubru 2018.

12. Rat illi fit 23 ta' Ottubru 2018 ir-rikorrent ippresenta s-sottomissjonijet tieghu.

13. Rat illi fid 29 ta' Ottubru 2018, il-Qorti ikkoncediet opportunita ohra lill-intimat sabiex jippresenta s-sottomissjonijet tieghu, u dana sat-22 ta' Novembru 2018, izda fit-22 ta' Novembru 2018, ebda sottomissjonijet ma kienu dahhlu u ghalhekk il-kawza thalliet ghas-sentenza ghallum.

14. Rat illi sa llum ma dahhlet ebda talba da' parte ta' l-intimat sabiex jippresenta sottomissjonijet tieghu.

3. Konstatazzjonijiet Fattwali

1. Jirrizulta illi r-rikorrent, illi fil-present huwa Membru Parlamentari fl-Opposizzjoni elett mal-Partit Nazzjonalista, precendentement kien jahdem fis-Secretarjat ta' Dr Austin Gatt illi, sa Marzu 2013, kien Ministru tal-Gvern tal-gurnata mmexxi mill-Partit Nazzjonalista.

2. Jirrizulta illi fil-bidu tas-sena 2013, fuq il-mezzi tax-xandir, kienet harget storja ta' allegat korruzzjoni da parte ta' George Farrugia li hija maghrufa bhala l-Iskandlu taz-Zejt, f'liema skandlu, f'mument minnhom, kien issemma wkoll Dr Austin Gatt.

3. Jirrizulta illi dak iz-zmien, ir-rikorrent kien ukoll kandidat tal-Partit Nazzjonalista u eventwalment gie elett bhala Membru tal-Parlament fil-Kamra tar-Rappresentanti.

4. Jirrizulta illi George Farrugia, il-persuna illi allegatament kien involut f'diversi atti ta' korruzzjoni relatati max-xiri u bejgh taz-zejt f'Malta u li inghata l-Mahfra Presidenzjali sabiex jghin fl-istharrig ta' dana il-kaz, kien involut ukoll fit-tmexxija ta' kumpannija tal-familja, li kien jisimha John's Garage.

5. Jirrizulta illi fid-9 ta' Gunju 2016, certa Christopher Farrugia, illi jiddeskrivi ruhu bhala "*CEO ta' bosta kumpanniji u minn 2010 kont responsabbli mill-interessi kummercjali ta' missieri fil-kumpannija John's Group of Companies*" ghamel affidavit fejn tkellem dwar l-involivment

ta’ George Farrugia u Dr Austin Gatt kif ukoll semma kif, darba minnhom, kien gie avvicinat mir-rikorrent u “*Grech talabni biex jiena niddisassocja ruhi mill-istorja u jien rrifjutajt*”.

6. Jirrizulta illi, ghalkemm ma sarx maghruf lill dina l-Qorti ghaliex gie redatt tali affidavit u jekk dana giex ippresentat fi proceduri illi hemm pendenti bejn il-familja Farrugia ma’ George Farrugia, tali affidavit gie a konoxxenza tal-gurnal Kullhadd, illi tieghu l-intimat huwa l-editur, u sussegwentement, fit 12 ta’ Gunju 2016, il-gurnal kiteb artikolu fil-faccata tal-gazzetta intitolat “***Ipprova jsikket Whistleblower***”, li ghalih ir-rikorrent sussegwentement nieda l-proceduri odjerni.

7. Jirrizulta illi tali ahbar giet ukoll irrappurtata fuq il-One News dakinhar stess, illi hija l-meritu tal-kaz Nru 138/2016 fl-ismijiet ‘Onor Claudio Grech vs Aleander Balzan’ illi kien qed jinstema kontestwalment mal-kawza odjerna u ser jigi deciz illum wkoll, kif ukoll issemma mill-Prim Ministru Dr Joseph Muscat waqt diskors illi ghamel dakinhar stess, liema diskors kien meritu ta’ kawza ohra, Rikors Nru 137/2016 fl-ismijiet ‘Onor Claudio Grech vs Onor Prim Ministru Dr Joseph Muscat’, liema kawza giet ceduta waqt il-mori tal-kawza odjerna wara transazzjoni milhuqa bejn il-partijiet.

8. Jirrizulta illi fil-proceduri odjerni, l-unika prova illi tressqet kienet dik tax-xhieda tar-rikorrent u dokumentazzjoni minnu mressqa, inkluz estratti minn diskors illi sar bejn ir-rikorrent u Christopher Farrugia mehud mill-istess rikorrent permezz ta’ recording bil-mohbi, liema estratti gew ikkonfermati minn dina l-Qorti illi huma mehuda minn diskussjoni itwal illi sehhet bejn ir-rikorrent, Christopher Farrugia u terzi persuni u li taghha gie ippresentat traskrizzjoni illi ma thallietx tiddahhal fl-atti in vista tan-natura tad-diskussjoni w il-mod kif dana gie rekordjat.

9. Jirrizulta, illi skond il-verzjoni tal-fatti kif moghtija mir-rikorrent, u korroborati mid-diskors illi gie rekordjat kif fuq indikat, jirrizulta illi kien Chris Farrugia illi talab li ssir laqgha mar-rikorrent sabiex jiddiskutu l-informazzjoni illi kienet hierga dwar l-hekk imsejjah “Skandlu taz-Zejt” illi kienet qieghda tinvolvi wkoll il-kumpanniji ta’ John’s Garage, li taghha Farrugia kien is-CEO, u f’tali laqgha kien Farrugia illi talab lir-rikorrent sabiex jipprova jara kif l-kumpannija John’s Garage ma tibqax tissemma fil-pubbliku in konnessjoni ma’ tali skandlu, ghax kien qed isirliha hsara.

10. Jirrizulta wkoll, minn tali recordings, illi Farrugia beda ukoll jaghmel referenza ghal diversi informazzjoni illi huwa kien sab fuq il-computer ta’ George Farrugia li, sa ftit qabel, kien jahdem ma’ John’s Garage, u indika illi tali informazzjoni kienet prova illi kien hemm varji istanzi fejn seta sehh it-tixhim, ghal liema indikazzjoni r-rikorrent, diversi drabi, indika lill Farrugia sabiex jiehu kull informazzjoni illi kellu lill-Pulizija u jiehu hsieb illi jghin lill-Pulizija fl-istharrig taghhom, sabiex il-verita’ tkun tista tohrog u min kien involut f’atti ta’ tixhim jinstab responsabbli.

11. Jirrizulta, mill-banda l-ohra, illi l-intimat qatt ma deher quddiem il-Qorti sabiex jippresenta l-provi tieghu u wisq anqas ma ressaq ebda prova in sostenn ta’ dak illi huwa kien qieghed jallega fl-artikolu meritu tal-kawza odjerna, ossija illi r-rikorrent kien qieghed jipprova jsikket lill Christopher Farrugia.

4. Konsiderazzjoni Legali

1. Jirrizulta illi ghalkemm l-intimat qatt ma ressaq prova in sostenn tad-difiza tieghu, huwa kien, tardivament u wara illi l-kawza kienet gia bdiet tinstema, talab illi jaghmel difiza, liema difiza huwa ghamel fejn, in succint, kienu s-segwenti:

    a. Illi rrapporta stqarrija guramentata li kellha titqies bhala awtentika a tenur tal-Artikolu 627 (e) tal-Kap 12
    b. Illi kellu dmir li jinforma lill-pubbliku dwar kwistjonijet ta' interess pubbliku
    c. Illi dak li kiteb kien jikkostitwixxi 'fair comment'

2. Jirrizulta illi jkun opportun illi jigu kkunsidrati certi principji legali fuq dawna d-difizi.

3. Dwar l-ewwel difiza, jirrizulta illi, l-Artikolu 627 (e) tal-Kap 12 jsemmi "*atti u registri tal-qrati tal-gustizzja*" u, dwar dawn l-ligi tipprovdi illi:

    Id-dokumenti msemmijin hawn taħt huma ammissibbli bi prova bla ma tkun meħtieġa ebda prova oħra tal-awtentiċità tagħhom, ħlief dik li tidher minnhom infishom, u jippruvaw dak li jkun fihom, sakemm ma jiġix ippruvat il-kuntrarju:

4. Jirrizulta, ghalhekk, illi l-Ligi tipprovdi li att li jigi ppresentat il-Qorti ghandu jittiehed bhala awtentiku u ma jkunx hemm htiega li l-awtenticita' taghhom tigi ppruvata – ebda referenza ma ssir dwar il-kontenut ta' tal atti u dak illi jkun allegat gewwa fih.
5. Dwar it-tieni u tielet difiza, li jistghu jitqies konteswalment, fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, inghad li l-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.

6. Jirrizulta wkoll illi, 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.

7. 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 w ta' rappurtagg minn gurnalist jenhtieg illi tigi bilancjata mad-dritt ta' hajja privata, w il-Qorti qalet li gej:

   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.

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-segwenti :

   ... dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust tkun tgħodd, 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; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħażen jew bil-ħsieb preċiż li jweġġa' 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-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.

11. L-istess intqal mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem fejn, fis-sentenza **Ruokanen and Others v Finland** deciza fl-4 ta' Ottubru, 2010, fejn qalet is-segwenti:

"41. One factor of particular importance is the distinction between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. A requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive where there is no factual basis to support it."

12. Mill-banda l-ohra id-dritt tal-gurnalist illi jirrapporta dak li jidhirlu xieraq u korrett, gie diskuss ampjament fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, fejn saret referenza ghall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, fejn qalet is-segwenti:-

78. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

13. Fuq ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tghid is-segwenti:

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".

14. L-istess intqal fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, fejn ziedet tghid:

…. 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.*

15. Tali principju reggha gie ripetut fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fuq meritu simili ghal dak in ezami, fejn intqal is-segwenti:

> *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.*

5. Konsiderazzjonijiet Finali

1. Il-Qorti ma tistax ma tosservax, l-ewwel u qabel kollox, illi l-intimat ma ghamel ebda sforz assolut sabiex jiddefendi l-kaz tieghu quddiem dina l-Qorti, u l-Qorti ma tistax ma taghmel referenza ghal dak illi qalet dina l-Qorti, f'kaz iehor fejn l-intimat naqas ukoll illi jiddefendi l-kaz tieghu, fl-ismijiet '***Dr Beppe Fenech Adami vs Aleander Balzan***', fejn il-Qorti hemmhekk qalet hekk:

> *Il-Qorti, ma tistax ma tosservax illi filwaqt illi huwa d-dmir ta' gurnalist illi jgharraf lic-cittadin dwar stejjer u ahbarjiet in konnessjoni ma' l-attivita' ta' persuni pubblici, aktar u aktar meta huma politici eletti mic-cittadin stess sabeix jirrappresentaw l-interessi tac-cittadin, daqstant huwa dmir ta' l-istess gurnalist illi jiddefendi l-argumenti u l-allegazzjonijiet tieghu bil-provi f'Qorti tal-Gustizzja meta dawna jigu kkontestati mill-persuna illi dwarhom tali allegazzjonijiet saru.*
>
> *Il-fatt illi l-intimat ghazel illi la jressaq difiza quddiem dina l-Qorti u wisq anqas jitlob illi jressaq provi in sostenn ta' l-argumentazzjonijiet tieghu ma jistghux ma jitqiesux minn dina l-Qorti bhala indikazzjoni illi l-intimat ma kienx preparat illi jisostanzja dak minnu allegat fil-konfront tar-rikorrent bil-fatti.*

2. Il-Qorti tosserva wkoll illi, ghalkemm l-intimat, fid-difiza tieghu, jikkontendi illi dak dikjarat minn Christopher Farrugia kien awtentiku abbazi tal-Artjolu 627 tal-Kap 12, imkien ma ngiebet prova illi attwalment dak id-dokument **<u>kien</u>** att "*tal qrati tal-gustizzja*", kif tghid il-Ligi. Dana qieghed jinghax ghax Affidavit guramentat, bhalma jidher kien id-dokument illi fuqu bbazata l-intimat, mhux necessarjament huwa att tal-Qorti, stante illi jista jintuza ghal skopijiet ohra u mhux fil-Qrati, u kien jinkombi fuq l-intimat illi jipprova illi tali dokument kienatttwalment att tal-Qorti.

3. Apparti minn hekk, il-Qorti tosserva illi d-dettam tal-Artikolu 627 tal-Kap 12 jirrigwarda l-awtenticita' tad-dokument bhala ammissibilta' ta' prova, u ma jfissirx illi dak kontenut fid-dokument huwa necessarjament verita' – huwa biss id-dokument '*per se*' illi jitqies awtentiku u ma jkun hemm ebda htiega ta' prova ohra biex tipprova l-awtenticita' tieghu. Il-kontenut tieghu, madanakollu, irid jitqies fil-kuntest tieghu.

4. Jirrizulta, fil-kaz odjern, illi ghalkemm l-intimat ikkontenda illi dak minnu rappurtat kien rizultat ta' gurnalizmu investigattiv, jidher illi tali gurnalizmu investigattiv waqaf hesrem mal-pubblikazzjoni tal-artikolu, w l-affidavit illi ghamel r-rikorrent l-ghada illi saret il-pubblikazzjoni, liema affidavit gie kkomunikat mir-rikorrent, qatt ma jidher illi inghata importanza mill-intimat u l-intimat ma ressaq ebda prova illi turi illi, b'xi mod, l-verzjoni tal-fatti tar-rikorrenti giet rappurtata lill-qarrejja

5. Il-Qorti, hawnhek, ma tistax ma taghmilx referenza ghal dak illi qalet il-Qorti tal-Appell fis-sentenza taghha fl-ismijiet '***Dr Beppe Fenech Adami vs Aleander Balzan***', fuq gia imsemmija fil-Prim Istanza quddiem dina l-Qorti, fejn il-Qorti tal-Appell kella dan xi tghid:

   9.1 F'dan l-aggravju l-appellant isostni li l-kaz jitratta kwistjoni ta' interess pubbliku u minn rapport gurnalistiku fuq persuna attiva fil-hajja pubblika u politika, u ghalhekk "kull limitazzjoni ghall-espressjoni gurnalistika, maghdud il-gudizzju politiku fuq din il-persuna, ma ghandux jigi applikat minghajr ezami approfondit tad-drittijiet fundamentali; senjatament il-principju kardinali illi l-liberta tal-espressjoni hi, fuq kollox, ir-regola u mhux l-eccezzjoni".

   9.2 F'dan l-aggravju l-konvenut qal l-ovvju. Pero' l-liberta tal-espressjoni ma jfissirx li tghid li trid u tattakka r-reputazzjoni ta' haddiehor billi tallega fatti qiesu xejn mhu xejn. Kulhadd ghandu l-jedd li jiddefendi r-reputazzjoni tieghu, irrispettivament huwiex persuna privata jew pubblika.

   9.3 Kieku l-konvenut ma kienx negligenti u ddefenda ruhu, kien ikollu l-opportunita li jressaq il-provi li l-fatti allegati huma veri. Wara l-qorti kienet tiddeciedi jekk mill-provi li ressaq il-konvenut, il-fatti kinux veri jew sostanzjalment veri u jekk kliem bhal 'skandlu tal-palazz ta' Beppe' u li 'Beppe Fenech Adami sar miljunarju kbir bis-sahha ta' decizjonijiet dubjuzi', kienx value judgement.

   9.4 L-iskrutinju ta' persuni bhall-attur hi essenzjali u l-gurnalisti ghandhom rwol important hafna f'dan kollu, partikolarment minn dawk il-gurnalisti li huma indipendenti u m'ghandhom l-ebda rabta ma' partiti politici. Sfortunatament, f'Malta l-gurnalisti indipendenti huma a rare breed u dan ma jghinx biex il-pubbliku ikollu rappurtagg li hu oggettiv.

6. Din il-Qorti ma tistax ma taghmilx taghha l-konsiderazzjonijiet tal-Qorti tal-Appell illi, ghal darba ohra, sahqet il-htiega illi mhux biss ikun hemm gurnalizmu investigattiv, izda jkun hemm ukoll gurnalizmu independenti, liema tip ta' gurnalizmu, llum il-gurnata, bil-polarizazzjoni u manilupazzjoni esistenti f'Malta u anke barra minn Malta, hija rarita' u eccezzjoni.

7. Dwar il-fatti tal kaz, jirrizulta ampjament, mill-provi prodotti, illi a differenza ta' dak allegat minn Christopher Farrugia, u sussegwentement rifless fl-artikolu illi deher fil-gurnal Kullhadd, mhux talli r-rikorrent ma kienx qieghed jipprova jwaqqaf lill Christopher Farrugia milli jirrapporta kaz ta' tixhim u, kif stqarr Farrugia stess jiddisassocja ruhu mill-istorja, izda

talli r-rikorrent insista ma' Farrugia sabiex jaghmel rapport minnufih lill-Pulizija bl-allegazzjonijiet kollha illi kellu sabiex jibdew l-investigazzjonijet kollha mehtiega.

8. Jirrizulta, bl-aktar mod car, illi r-rikorrent, a differenza ta' dak illi allega l-artikolist fl-artikolu meritu tal-kaz odjern, kien qieghed iheggeg lill-Christopher Farrugia sabiex imur minnufih lill-Pulizija biex jirrapporta l-informazzjoni kollha illi huwa kellu dwar atti ta' korruzzjoni – altru milli "Ipprova jsikket Whistleblower", kif jallega l-artikolist tal-gazetta Kullhadd – r-rikorrent iheggeg lill Farrugia sabiex jirrapporta minnufih.

9. Jirrizulta, ghalhekk, illi l-allegazzjoni illi r-rikorrent "Ipprova jsikket Whistleblower" ma kellha assolutament xejn mill-verita' u kull ma kellu jaghmel l-artikolist qabel ma tella l-istorja kien illi jaghmel verifika mar-rikorrent qabel ma jippubblika l-istorja – dak huwa x'wiehed ghandu jippretendi minn gurnalizmu investigattiv – illi tirrapporta b'mod veritjer u onest iz-zewgt verzjonijet tal-fatti u thalli lill-qarrejja jaslu ghall-konkluzjonijiet taghhom.

10. Jirrizulta car illi, fil-kaz odjern, tali investigazzjoni gurnalistika ma sehhietx, u l-artikolist ikkuntenta ruhu billi rrapporta biss verzjoni wahda tal-fatti, u partikolarment, fil-kaz odjern, l-ahhar zewgt linji ta' affidavit ta' tlett faccata, liema zewgt linji kienu l-unici li semmew, b'xi mod, lir-rikorrent.

11. Jirrizulta car, ghalhekk, fil-kaz odjern, illi l-artikolu imtella mill-artikolist u meritu tal-kaz odjern ma kienx intenzjonat sabiex jaghti lill-qarrejja storja b'fatti sabiex jaslu ghall-konkluzjonijiet taghhom b'mod independenti, izda kien ibbazat fuq konkluzjonijiet gia milhuqa mill-artikolist u redatti f'artikolu unikament sabiex jirreka dannu lir-rikorrent u jitfa suspett u dawl ikrah fuq l-istess rikorrent, liema fatti, mill-provi prodotti mir-rikrorenti, jidhru illi kienu sostanzjalment skorretti u zbaljati u intizi biss biex jaghmlu hsara lir-rikorrent.

12. Il-Qorti ma tistax ma tadottax, anke fil-kaz odjern, dak illi gie osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016.

    Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbaghad tipprova tistahba wara dan id-dritt.

13. U dwar l-agir ta' gurnalist, il-Qorti thoss illi ghandha taghmel referenza ghall-kaz deciz mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Ingineer Anthony Bezzina vs Josef Caruana**' deciza fl-10 ta' Marzu 2017, fejn qalet is-segwenti:

    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 .

6. Konsiderazzjonijiet ta' danni

1. Il-Qorti tosserva illi fil-kawza deciza mill-Qorti tal-Appell fl-ismijiet '***Dr Andrew Borg Cardona et vs Aaron Farrugia***' deciza fit 18 ta' Dicembru 2018, il-Qorti kellha dan xi tghid dwar il-kalkolu tad-danni:

"il-qorti hi tal-fehma li jkun iktar floku jekk f'kawza ta' libell l-ewwel qorti fis-sentenza taghti r-ragunijiet li jkunu wassluha biex tillikwida s-somma li tikkundanna lill-konvenut ihallas. Hemm diversi ragunijiet, bhal per ezempju:

- *In-natura u s-serjeta tal-allegazzjoni li tkun saret fid-dikjarazzjoni malafamanti;*
- *Il-mezz tal-pubblikazzjoni;*
- *Kemm id-dikjarazzjoni malafamanti tkun inxterdet;*
- *Li l-awtur ikun ghamel apologija jew offra li jaghmel apologija;*
- *Provi dwar ir-reputazzjoni tal-attur;*
- *Fejn il-konvenut ikun invoka l-verita tal-fatti, jekk parti mill-fatti li jkun gew imxandra jkunu rrizultaw li huma veri; "*

2. Din il-Qorti tikkondividi pjenament il-hsieb u l-konsiderazzjoni tal-Qorti tal-Appell, u filwaqt illi taghmilha taghha, taghmel ukoll referenza ghall-gurisprudenza ohra fejn jirrigwarda l-kalkolu ta' danni.

3. Jirrizulta illi fil-kaz **CLEESE V CLARK & Associated Newspapers** deciz mill-England and Wales High Court (Queen's Bench Division) fis-sitta ta' Frar 2003, l-Imhallef Eady kellu dan xi jghid dwar l-kuncett ta' danni:

37. The purpose of libel damages is threefold:

(1) to compensate for distress and hurt feelings;
(2) to compensate for any actual injury to reputation which has been proved or which may reasonably be inferred:
(3) to serve as an outward and visible sign of vindication.

38. It is necessary always to take into account the full circumstances of the case. Such factors have to be borne in mind as the gravity of the allegations, the scale of publication, the extent to which any readers believed the words to be true, any impact upon the claimant's feelings, reputation or career. There may be matters of aggravation or mitigation which also need to be put in the scales. It is, moreover, often the case that the claimant's own conduct will have a part to play in arriving at the appropriate figure. A fundamental point always to be remembered is that the purpose of such damages, and indeed compensation awarded under s.3(5), is compensatory and not punitive. It is also wel1 sealed that financial compensation (unlike any penalty) is to be awarded without regard to the parties' means. It is thus inappropriate to award higher compensatory damages because a newspaper group is perceived as having immense wealth; correspondingly, it would be inappropriate to award a rich claimant a greater sum than one who is less well off simply because the damages in contemplation might seem to him or her merely a drop in the ocean.

4. Lokalment, jirrizulta illi fil-kawza deciza fis sitta ta' Frar 1950 mill-Prim Awla fl-ismijiet **Onor. Paul Boffa noe et vs Paul Zammit** (vol. XXXIV p. II. p. 480), intqal is-segwenti:

"Il-mezzi li l-ligi tuża sabiex tirrepara u tirristabilixxi d-dritt vjolentement spostat fuq il- bażi tiegħu huma diversi... Infatti... min jonqos minn obbligazzjoni jigi obbligat jadempiha fil-forma specifika jew jigi kundannat għar-riparazzjoni tad-danni bħala surrogat reintegrattiv. Imma hemm certi fattijiet li huma rriperabbli bħal meta jkun hemm id-distinzjoni, il-għaliex hu logiku u naturali li dak li jigi

distrutt ma jistax jerga' jirritorna taħt l- ebda forma. (Il-bniedem maqtul, l-unur tal-persuna kalunjata jew malafamata huma eżempju ta' fattijiet irreparabbli)."

5. Fil-kaz '**Lawrence Cachia Zammit et vs Carmelo Chetcuti A&CE**', deciz mill-Prim'Awla fit-8 ta' Novembru 1957, il-Qorti qalet is-segwenti:

   "L-interess biex wieħed jagixxi jista' jkun pekunarju u anke morali, purche' guridiku, jigifieri korrispondenti għall-lezzjoni ta' veru dritt; u għalhekk ittra mibgħuta lil persuna, li tilledi l- onorabilita' ta' persuna oħra, tagħti lil dan ta' l-aħħar id- dritt li titlob il-protezzjoni tal-ligi biex tottjeni dikjarazzjoni mill-Qorti tal-falsita' tal-kontenut ta' dik l-ittra; ***u dan avvolja l-persuna offiża ma tkunx sofriet danni materjali****."*

6. Finalment, fil-kaz "**Carmel Tonna et –vs- Felix Agius et**", deciza fit- 23 ta' Marzu 1993 (Vol LXXVII pII p87) il-Prim'Awla talQorti Civili presjeduta mill-Onor. Imhallef Joseph Said Pullicino, kienet irriteniet li kellha tinzamm sens ta' proporzjon in materja tal-likwidazzjoni tad-danni. Il-Qorti, di fatti, kienet qalet illi

   "l- azzjoni ta' libell, biex tkun verament effikaci u gusta, ghandha tigi adoperata b'gudizzju u cirkospezzjoni, tenut kont ta' l-ingurja, il-gravita` taghha, lejn min tkun diretta u lil min tkun mahsuba tilhaq u x'danni konsegwenzjali diretti jew indiretti tista' tiggenera".

7. Mehud dana kollu in konsiderazzjoni, il-Qorti taghmel is-segwenti osservazzjonijet:

   a. Ir-rikorrent huwa persuna impenjata fil-kap politiku u, kif del resto accetta huwa stess, ghandu jkun espost ghal kritika, anke okkazzjonalment harxa, tal-agir u l-azzjonijiet tieghu, stante illi tali possibbilta' ta' kritika tassikura illi persuna politika tkun dejjem soggetta ghal skrutinju, fl-ahjar interess tad-demokrazija;

   b. La darba ir-rikorrent huwa persuna pubblika, il-Qorti tifhem illi l-ghan ewlieni tieghu ta' azzjoni ta' libell huwa illi jirrettifika kwalsiasi informazzjoni skorretta illi tkun inharget kontra tieghu u li, fil-pubbliku, jigi skagunat u mehlus minn kwalsiasi akkuza illi tkun saret kontra tieghu infondatament;

   c. Ir-rikorrent, fil-kaz odjern, di fatti, ma kkwantifika ebda danni illi seta sofra rizultat ta' dak irrapportat fil-gurnal.

   d. L-intimat, da parte tieghu, huwa gurnalist illi qieghed hemm sabiex jgharraf lill-pubbliku, u aktar u aktar, il-qarrejja tieghu, dwar fatti li huma ta' interess pubbliku – madanakollu, huwa ghandu jassikura illi tali fatti jkunu bilancjati u jaghtu l-istampa <u>kollha</u> tal-fatti, sabiex l-qarrejja ikun f'posizzjoni jikkummentaw u jaslu ghall-konkluzjoni fuq bazi oggetttiva – tali bilanc ma giex assikurat mill-artikolist fl-artikolu meritu tal-kawza odjerna.

   e. L-intimat, fil-kaz odjern, ma ghamel ebda sforz sabiex jiddefendi l-kaz tieghu u wisq anqas ma ghamel ebda tentativ sabiex jgharraf lill-qarreja tieghu dwar il-verzjoni tal-fatti moghtija mir-rikorrent <u>l-ghada</u> illi harget l-istorja;

   f. L-istorja illi ppubblika l-intimat, fil-kaz odjern, u illi originat minn investigazzjoni ta' l-istess gazzetta, jidher illi nghatat prominenza konsiderevoli, tant illi giet irrappurtata fuq il-One TV dakinhar stess, illi hija l-meritu ta' kaz iehor li ser jigi deciz illum, u ssemmiet mill-Prim Ministru f'diskors illi ghamel dakinhar stess tal-pubblikazzjoni, li kien ukoll il-meritu ta' kaz iehor li, fil-mori tal-kaz odjern, gie tranzatt bejn il-partijiet, apparti li ssemmiet fuq mezzi ohra tax-xandir – u ghalhekk ir-responsabbilta' tmur

oltre dik tal-pubblikazzjoni, izda ghandha tirrifletti wkoll il-fatt illi l-istorja li eventwalment inxterdet fuq il-mezzi tax-xandir kienet attwalment originat mill-intimat.

g. Finalment, il-Qorti tosserva illi l-allegazzjoni illi saret kontra r-rikorrent kienet wahda serja, stante illi gie allegat illi huwa stieden persuna sabiex ma jirrappurtax kaz ta' korruzzjoni, fatt illi, minnu nniffsu, seta kellu konsegwenzi legali ohra kieku rrizulta vera – ghaldaqstant l-allegazzjonijiet illi saru kienu serji.

8. Tenut kont ta' dawna l-fatti kollha, il-Qorti tqis illi jkun opportun li d-danni jigu kkwantifikati fl-ammont ta' elfejn Euro (€2,000).

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi rat is-sottomissjonjiet ta' l-abbli difensur tar-rikorrent

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

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimat,

Tilqa t-talba tar-rikorrent kif dedotti u

Tiddikjara il-kontenut ta' l-artikolu illi deher fil-"Kullhadd" tat-12 ta' Gunju 2016, intitolat "*Jipprova jsikket whistleblower*" bhala libelluz u malafamanti fil-konfront tar-rikorrent u ghalhekk,

Tikkundanna lill-intimat, bhala l-editur responsabbli ghall-gazzetta Kullhadd ihallas lir-rikorrent is-somma ta' elefejn Euro (€2,000) 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