



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis tmienja u ghoxrin (28) ta' Frar 2019

**Rikors Numru 386/15 FDP**

**Malta Gay Rights Movement  
(VO/0039)**

vs

**Gift of Life Foundation  
(VO/0246)**

Il-Qorti:-

### 1. Premessi

1. Rat ir-rikors promotur ippresentat fit-22 ta' Dicembru 2015 fejn ir-rikorrent Malta Gay Rights Movement, talbet is-segwenti:

*Illi l-Malta Gay Rights Movement (MGRM) hija ghaqda registrata mal-Ufficcju tal-Kummissarju ta' l-Ghaqdiet Voluntarji, bin-numru VO/0039 li ghandha bhala l-iskop il-promozzjoni ta' l-ugwaljanza ta' individwi LGBTI fis-socjeta Maltija.*

*Illi bejn Settembru u Ottubru tas-sena 2015, l-Ghaqda Gift of Life Foundation (Gift of Life), registrata mal-Ufficcju tal-Kummissarju ta' l-Ghaqdiet Voluntarji, bin-numru VO/0246 xandret hafna allegazzjonijiet fuq is-sit socjali facebook, li l-MGRM qedha tippromovi l-introduzzjoni ta' l-abort f'Malta u ghandha l-istess skopijiet ta' l-ghaqda Amerikana Planned Parenthood;*

*Illi l-MGRM m'ghandhiex rabtiet mal-ghaqda Amerikana 'Planned Parenthood'. L-MGRM numru ta' snin ilu, precizament fis-sena 2010, akkwistat fondi minn 'International Planned Parenthood Federation' (IPPF), li hija organizazzjoni separata u distinta mill-ghaqda Amerikana Planned Parenthood', sabiex tistabilixxi*

*proposti lil Gvern dwar l-introduzzjoni ta' 'Gender Identity Act' f'Malta, li illum saret ligi.*

*Illi minkeja dawn il-fatti il-'Gift of Life' ghamlet diversi allegazzjonijiet libelluzi, li fost ohrajn (u dan kif ser jigi pprovat waqt l-istadju tal-provi), kienu jikkonsistu mis-segwenti:*

*(i) fit-30 ta' Settembru 2015 Gift of Life, fuq is-sit socjali facebook gie ddikjarat: "BREAKING NEWS! ARE THE MALTA GAY RIGHTS MOVEMENT BEING SUPPORTED BY INTERNATIONAL ABORTION PROMOTERS -PLANNED PARENTHOOD? The drive to legalize abortion by stealth, under the disguise of Embryo freezing is now clearer for you to understand." Dan johrog min dokument li qed jigi anness u immarkat bhala 'Dok A';*

*(ii) fl-1 ta' Ottubru 2015 Gift of Life, fuq is-sit socjali facebook gie ddikjarat: "It is now clear that Planned Parenthood are using the MGRM, as well as this new pro-abortion group, in a two-pronged attack on human life in Malta. If you stay silent, you are failing those who cannot defend themselves." Dan johrog min dokument li qed jigi anness u immarkat bhala "Dok B";*

*(iii) Illi fit-2 ta' Ottubru 2015 Gift of Life, fuq is-sit socjali facebook gie ddikjarat: "There is no other reason why IPPF are financially supporting the MGRM in Malta other than to then push to open their abortion franchises (clinics) here as well. It is huge money, a colossal business and too tempting to resist for the world's most aggressive extremist pro-abortion organisation to resist." Dan johrog min dokument li qed jigi anness u immarkat bhala 'Dok C*

*Illi dawn id-dikjarazzjonijiet huma foloz, ghal l-ahhar u dan ghaliex l-MGRM qatt ma ppromoviet l-introduzzjoni ta' l-abort f'Malta. L-MGRM m'ghandhiex posizzjoni fuq dan. Illi l-MGRM tqis tali kummenti bhala libelluzi fil-konfront taghha peress illi jikkontjenu alegazzjonijiet foloz u malafamanti fil-konfront tal-ghaqda rikorrenti u ghandhom bhala skop dak li jtellfu jew jnaqqsu r-reputazzjoni taghha;*

*Illi tali kummenti huma libelluzi ai termini tal-Kap 248 tal-Ligijiet ta' Malta u konsegwentament jaghtu skop ghal hlas ta' danni a tenur tal-Artikolu 28 ta' l-istess Kap 248 tal-Ligijiet ta' Malta;*

*Ghaldaqstant, in vista tas-suespost l-ghaqda rikorrenti, Malta Gay Rights Movement, titlob lil dina l-Onorabbli Qorti sabiex:*

*1. Tiddikjara li l-kummenti imxandra fuq is-sit socjali Facebook ta' l-intimati libelluzi fil-konfront ta' l-MGRM peress illi jikkontjenu alegazzjonijiet foloz u malafamanti fil-konfront tal-ghaqda rikorrenti u ghandhom bhala skop dak li jtellfu jew jnaqqsu r-reputazzjoni taghha;*

*2. Tillikwida d-danni a tenur tal-Artikolu 28 tal-Kap 248;*

*3. Tikkundana l-hlas tad-danni hekk likwidati;*

2. Rat ir-risposta tal-konvenut Ivan Grech Mintoff ippresentat fid-19 ta' Jannar 2016, fejn laqa' ghal dak mitlub billi qajjem is-segwenti linji difensjonali:

*1. Preliminarjament:*

*(a) Illi r-rikors promotur huwa null billi mhux magħmul in konformita ma' dak stabbilit fil Kodici ta' Procedura u Organizzazzjoni Civili (Formula 31 ta' Skeda B);*

*(b) Illi huwa persuna fizika, u mhux oraganizzazzjoni jew ghaqda, illi ghandha fama u ghalhekk l-Art. 28 tal-Kap. 248, li fuqu huwa bbazat ir-rikors promotur, mhux applikabbli għall-ghaqda*

*2. Fil-mertu, illi l-pubblikazzjoni de quo tammonta għall-fair comment dwar fatti sostanzjalment korretti liema value judgements huma protetti kemm mill-Kostituzzjoni u kemm mill-Konvenzjoni Ewropeja.*

## 2. Provi

1. Semgħet ix-xhieda ta' **Gaby Calleja**, Ko-Ordinatrici tal-Moviment rikorrenti, mogħtija fl-4 ta' April 2016 u rat id-dokumentazzjoni minnha esebiti.
2. Semgħet ix-xhieda ta' **Colette Farrugia Benett**, prodotta mir-rikorrenti u mogħtija fid-19 ta' Mejju 2016
3. Semgħet ix-xhieda ta' **Dr Neil Falzon**, prodott mir-rikorrenti u mogħtija fl-10 ta' Novembru 2016.
4. Semgħet ix-xhieda ta' **Sylvan Agius**, prodott mir-rikorrenti u mogħtija fis-27 ta' Marzu 2017.
5. Rat illi fis-27 ta' Marzu 2017 ir-rikorrenti ddikjarat illi ma kellhiex aktar provi x'tipresenta.
6. Semgħet ix-xhieda ta' **Paul Vincenti**, Administratur tal-Gift of Life Foundation, mogħtija fit-18 ta' Mejju 2017 u rat id-dokumentazzjoni minnu ppresentata.
7. Rat illi fis-26 ta' Gunju 2017 l-intimat ippresenta nota b'dokumentazzjoni varja.
8. Rat illi fis-6 ta' Novembru 2017 il-partijiet qablu illi l-provi migbura fil-kawza 387/15 fl-ismijiet **Malta Gay Rights Movement vs Ivan Grech Mintoff** kellhom japplikaw għal kaz odjern ukoll.
9. Semgħet ix-xhieda ta' l-intimat **Ivan Grech Mintoff** mogħtija fis-6 ta' Novembru 2017 u rat id-dokumentazzjoni minnu ppresentata.
10. Semgħet ix-xhieda ulterjuri ta' Ivan Grech Mintoff mogħtija fl-14 ta' Dicembru 2017 u rat id-dokumentazzjoni minnu ppresentata.
11. Semgħet ix-xhieda in kontro ezami ta' Paul Vincenti mogħtija fl-10 ta' Mejju 2018.
12. Semgħet ix-xhieda in kontro ezami ta' Ivan Grech Mintoff mogħtija fl-10 ta' Mejju 2018.
13. Semgħet ix-xhieda in kontro ezami ta' Ivan Grech Mintoff mogħtija fit-18 ta' Gunju 2018.
14. Rat illi fit-18 ta' Gunju 2018 il-partijiet qabblu illi ma kellhomx aktar provi x'jippresentaw u għalhekk il-kawza setgħet tithalla għas-sottomissjonijiet finali bil-miktub.

15. Rat is-sottomissjonijiet rikorrenti ipprezentati fil-25 ta' Ottubru 2018.
16. Rat is-sottomissjonijiet ta' l-intimat ipprezentati fl-14 ta' Frar 2019.
17. Rat illi fl-14 ta' Frar 2019 il-kawza giet differita ghas-sentenza ghal-lum.

### 3. Konstatazzjonijiet fattwali

1. Jirrizulta illi, fit-30 ta' Settembru 2015, giet ippubblikata 'post' fuq il-pagna tal-Facebook tal-ghaqda intimata, illi fih intqal is-segwent: (fol 5)

#### ***BREAKING NEWS!***

#### ***ARE THE MALTA GAY RIGHTS MOVEMENT BEING SUPPORTED BY INTERNATIONAL ABORTION PROMOTERS -PLANNED PARENTHOOD?***

*The drive to legalize abortion by stealth, under the disguise of Embryo freezing is now clearer for you to understand. (sottolinjar tar-rikorrenti) The link is this. The government is likely attempting to use so-called, improvement in the success rate, to justify the unjustifiable. The motivation may be here. The Malta Gay Rights Movement are pushing for this legislation behind the scenes so that same-sex married couples can also create babies using borrowed sperms, wombs, and the killing of unwanted embryos when these are no longer needed.*

*It would seem that the MGRM have Planned Parenthood supporting them as can be seen in this document which someone sent to us today! Read and make up your own mind.*

#### ***PLEASE SHARE NOW!***

2. Jirrizulta illi l-ghada, fl-1 ta' Ottubru 2015, l-ghaqda intimata tellghet 'post' iehor fuq il-pagna taghha ta' Facebook fejn qalet is-segwent:

#### ***ALERT -ALERTI PLEASE SHARE THIS ACROSS SOCIAL MEDIA***

*Below is the evidence we were looking for, which shows that the world's most powerful extremist abortion promoters, Planned Parenthood (<https://www.plannedparenthood.org>), are working directly with the MGRM in Malta.*

*MGRM need embryo freezing in IVF so that same-sex couples can have easier access to IVF service in Malta, even as part of national healthcare. Planned Parenthood's aim is to eventually see abortion legalized in Malta. It would seem that the government is under pressure by the MGRM and may somehow feel compelled to support their cause for reasons that are unknown to us.*

*Both of these groups have mutual objectives and have now combined their forces. If they manage to legalize embryo freezing, they would have both achieved their aims. Basically, it is a win-win outcome for both groups!*

*Please keep in mind that there also is a new group in Malta, who call themselves 'Pro choice Malta' who have been actively promoting Planned Parenthood on their Facebook page since the summer. **It is now clear that Planned parenthood are using the MGRM, as well as this new pro-abortion group, in a two-pronged attack on human life in Malta. If you stay silent, you are failing those who cannot defend themselves.** (sottolinjar tar-rikorrenti)*

*Please share this post. Let all the Maltese know what is happening right under their noses.*

*Please help stop this! Share this post! Write to your MP. Tell them that the unborn is not for sale.*

3. Jirrizulta illi l-ghada, fit-2 ta' Ottubru 2015, l-ghaqda intimata regghet tellghet 'post' iehor fuq il-pagna taghha ta' Facebook fejn qalet is-segweni:

*Wondering why embryo freezing and abortion and the Malta Gay Rights Movement are all directly linked?*

*Read this.*

*The Malta Gay Rights Movement (MGRM) are pushing for embryo freezing so that same sex couples can then use the IVF service in Malta to have kids. Their mouth piece seems to be the Government, who have stated that they are resolute to introduce freezing. This week we discovered that the MGRM are being financed by International Planned Parenthood Federation (IPPF). The IPPF are the world's most successful, most aggressive extremist promoters of abortion internationally. They abort babies up to the 40th week in the states in their own clinics If the MGRM get their way, keep in mind that embryo freezing turns the life into a product. Once you freeze embryos by law, you can then legally do what you like with that product. You can discard it, store it, give it away, sell it, select the best products, destroy or keep in reserve the lesser perfect ones. Basically, with embryo freezing, the human life automatically takes on a new persona. It only becomes important, if you want it or need it to get pregnant. Life from conception automatically becomes a 'choice enshrined by Maltese law. IPPF are killing over 4 million babies annually in the US alone as you read this post. They are very active promoting and legalizing abortion in other pro-life countries. They are now working with the MGRM to get embryo freezing legalized. This under the seemingly good cause of helping them attain a better chance at becoming parents Joseph Muscat avoids mentioning this and only talks about parents in general attaining a better opportunity at becoming pregnant, which, is not true according to the governments own statistics. Malta's success rates with the current law are better than those of the UK, who have embryo freezing. Their plan (PP) is to then, use the excuse of embryo freezing and how the embryo considered by law, to then extend this logic to al other unborn life, as PP have done in other countries successfully. Keep in mind that the abortion slogan is 'choice'. PP will then push the local pro- choice Malta group financially to help to finally formalize and legalize full- blown abortion in Malta. It will become impossible to argue against legalised abortion as the pro-choice Malta group will state that the law with embryo freezing, already makes it clear that human life is a choice from conception. They will have a point as the law will be on their side. Now,*

*the link is clear, I hope you will choose to see what is obvious **There is no other reason why IPPF are financially supporting the MGRM in Malta other than to then push to open their abortion franchises (clinics) here as well. It is huge money, a colossal business and too tempting to resist for the world's most aggressive extremist pro-abortion organisation to resist.*** (sottolinjar tar-rikorrenti)

4. Jirrizulta illi, fit 22 ta' Dicembru 2015, ir-rikorrenti nedew il-proceduri odjerni.

#### **4. Konstatazzjonijiet legali**

1. Jirrizulta illi l-intimat, fid-difiza tieghu, qajjem zewg difizi, wahda preliminari u wahda fil-meritu.
2. Jirrizulta illi, preliminarjament, sahaq illi r-rikors kien null ghax mhux konformi mal-formalitajiet legali stabbiliti fil-Kap 12, specifikament Formula 31 ta' Skeda B;
3. Jirrizulta illi, sussegwentement, fil-meritu, l-intimat sahaq illi dak li qal kien jammonta ghal *fair comment* dwar fatti sostanzjalment korretti.

#### **A - Eccezzjoni Preliminari**

4. Jirrizulta illi, dwar l-eccezzjoni relatata mal-formalita' tal-mod kif gie redatt l-Avviz, l-Artikolu 171 (1) tal-Kap 12 jipprovdi illi:

*Fil-Qorti tal-Magistrati (Malta) u fil-Qorti tal-Magistrati (Għawdex) fil-kompetenza tagħha inferjuri, jitmexxa bil-mod ta' rikors li jkun skont l-għamla preskritta u jsir fl-għamla ta' avviz sempliċi ffirmit mir-Registatur, li jkun fih l-isem u l-kunjom tal-attur u tal-konvenut, it-talba tal-attur, u l-jum u l-ħin meta l-konvenut għandu jidher, minbarra partikolaritajiet oħra li jistgħu minn żmien għal żmien jiġu preskritti.*

5. Jirrizulta illi l-Artikolu 174 (1) tal-Kap 12, dwar x'għandu jkun fihom l-iskritturi, jipprovdi dan li gej:

*174. (1) Kull skrittura għandu jkun fiha -*

*(a) l-isem tal-Qorti u tas-sezzjoni tagħha li fiha tiġi pprezentata l-iskrittura, u, fil-każ tal-Qorti tal-Magistrati (Għawdex), l-indikazzjoni tal-kompetenza tal-Qorti;*

*(b) l-isem u l-kunjom tal-parti li tidher u tal-parti li kontra tagħha l-iskrittura ssir, u, meta hu l-każ, l-isem li fih jidhru l-partijiet:*

*Iżda f'kull każ imsemmi fis-subartikolu (1) tal-artikolu 181 ikunu biżżejjed li tissemma' l-kariga tal-parti li tippreżenta jew li kontra tagħha tiġi pprezentata l-iskrittura, skont il-każ;*

*(c) l-isem tal-iskrittura; u*

*(d) jekk l-iskrittura tkun tirreferixxi għal kawża ġa mressqa f'waħda mill-qrati superjuri, in-numru tar-rikors ġuramentat li għalihom tkun tirreferixxi.*

6. Jirrizulta, finalment, illi l-Artikolu 1007 (2) tal-Kap 12 jipprovdi illi:

*(2) Fil-qrati inferjuri, għandhom jitharsu, sakemm jistgħu jgħoddu għalihom, il-formuli tal-qrati superjuri, billi jsir fihom dawk il-korrezzjonijiet jew tibdil li jagħmilhom jaqblu għall-qrati inferjuri.*

## **B - Eccezzjoni fil-meritu – “fair comment”**

7. Jirrizulta illi dwar l-eccezzjoni, fil-meritu, illi l-kummenti tiegħu kienu ‘*fair comment*’ u ‘*value judgment*’ protetti mill-legislazzjoni kemm lokali kif ukoll estera, ikun iopportun illi jitqiesu xi principji generali stabbilit mill-Qrati lokali u esteri dwar tali kuncett.

8. Dwar ‘*fair comment*’, **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 i :

*... dwar l-aspett tad-difiza tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment ġust tkun tghodd, jeħtieġ li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun ġustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.*

10. Tali tagħlim huwa anke rifliss f' guriprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord Phillips għamel is-segwent i 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, il-Qorti taghmel referenza ghas-sentenza ricenti tal-Qorti tal-Appell (Sede Inferjuri) deciza fil 21 ta' Frar 2017 fl-ismijiet “**Adrian Mizzi vs Ryan Paul Galea**” fejn ghamlet is-segwenti rendikont ta' taghlim dwar d-difiza tal-“fair comment”:

*Fil-meritu d-difiza tal-konvenut kienet li, “Il-kummenti tal-esponenti jammontaw ghall-fair comment bazati fuq fatti sostanzjalment korretti”. Hemm distinzjoni bejn fatti u fair comment, li m'hijiex dejjem faċli li tistabbilixxi. F'opinjoni li nkitbet mill-Avukat Ġenerali Poiares Maduro fil-Qorti tal-Ġustizzja Ewropea fil-każ Marra vs De Gregorio et, 26 ta' Ġunju 2008, kiteb:*

*“Second, a distinction must be drawn between factual allegations against particular individuals and opinions or value judgments. As the European Court of Human Rights has held ‘while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The 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’. When a Member of Parliament makes a value judgment about a matter of general importance, no matter how upsetting or offensive some people may find it, he should, in principle, be able to avail himself of absolute privilege”.*

*Il-Qorti Ewropea ta' Strasburg fil-każ Sofranschi vs Moldova (34690/05) tal-21 ta' Diċembru 2010, qalet:*

*“32. A further aspect of the complaint which is relevant for the Court's determination in the present case is the distinction between statements of fact and value judgments. The applicant's letter contained both factual allegations of irregular conduct on the part of V.P. and value judgments about his unethical behaviour. It has been the Court's consistent view that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The 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 rights secured by Article 10 (see Savitchi v. Moldova, no. 11039/02, § 49, 11 October 2005)”.*

*Dwar fatt u kumment, Lord Phillips fis-sentenza Joseph vs Spiller (2010) (Qorti Suprema tal-Ingliterra) qal:*

*“17. Second, the comment must be recognisable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of Myerson v. Smith's Weekly Publishing Co Ltd (1923) 24 SR (NSW) 20, 26: 'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say*



*that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment”.*

12. Dwar id-difiza ta’ “value judgments”, imqajjma wkoll mill-intimat, ssir referenza ghad-decizjoni fil-kawza **Erla Hlynisdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil 21 ta' Ottubru 2014, fejn 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.*

13. 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-segwenti:

*"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."*

## 5. Konstatazzjonijiet ta’ fatti

1. Jirrizulta, mill-provi prodotti, illi l-ghaqda Gift of Life Malta, permezz ta’ serje ta’ ‘posts’ fuq il-pagna taghhom tas-sit socjali Facebook, allegaw illi l-ghaqda rikorrenti Malta Gay Rights Movement hija finanzjata mill-“Planned Parenthood”, bl-inidirizz tas-sit [www.plannedparenthood.org](http://www.plannedparenthood.org), li giet deskritta bhala “the world’s most powerful extremist abortion promoters”, u illi l-ghan ta’ dan huwa sabiex l-MGRM tippromuovi l-introduzzjoni tal-embryo freezing u tal-abort gewwa Malta.
2. Jirrizulta illi l-kwistjoni kollha skattat minn kwistjoni relatata ma’ fondi illi allegatament il-muviment rikorrenti kien ircieva minghand l-ghada International Planned Parenthood Federation, sabiex jirredigu ligi ghall-Malta dwar l-Identita’ tal-Generu, liema fondi, l-intimata tikkontendi kienu fondi illi gew ottenuti mill-promozzjoni u servizz ta’ abort.
3. Jirrizulta illi, skond is-sit ufficjali tal-**International Planned Parenthood Federation**, tal-Federazzjoni ghandha s-segwenti ghanjiet:

### ***Vision***

*All people are free to make choices about their sexuality and well-being, in a world free of discrimination.*

### ***Mission***

*Building on a proud history of 65 years of achievement, we commit to lead a locally owned, globally connected civil society movement that provides and enables services and champions sexual and reproductive health and rights for all, especially the under-served.*

### ***Core values***

*Our core values guide the way we undertake our work. We believe:*

- *in social inclusion with a demonstrated commitment to enable the rights of the most under-served to be realised*
- *in diversity, respecting all regardless of their age, gender, status, identity, sexual orientation or expression*
- *our passion and determination inspire others to have the courage to challenge and seek social justice for all*
- *in the significant contribution our volunteerism delivers across a range of roles and as activists inspiring the Federation to advance its mission*
- *in accountability as a cornerstone of trust which is demonstrated through high performance, ethical standards and transparency.*

4. Jirrizulta, dejjem mill-istess sit tal-internet tal-International Planned Parenthood Federation, illi hija federazzjoni ta' varji ghaqdiet nazzjonali u, fi kliem l-istess ghaqda:

*the charity is a Federation of 141 Member Associations working in 152 countries, with another 24 Partners working in 19 countries.*

5. Jirrizulta illi fost il-141 membru ta' tali Federazzjoni, hemm l-Assocjazzjoni Amerikana imsejjha '**The Planned Parenthood Federation of America**' (PPFA) li, fost is-servizzi illi hija taghti, kien inkluz ukoll "330,000 abortion-related services" fis-sena 2011 – (fol 127 tal-process 387/15).
6. Jirrizulta illi fis-sena 2017, is-Senat Amerikan ghadda legislazzjoni, imsejjha *Better Care Reconciliation Act*, fejn, fost affarjiet ohra, l-Assocjazzjoni Amerikana Planned Parenthood Federation of America' giet mnehija d-dritt illi tibqa tinghata fondi mill-Gvern Amerikan stante illi kien qed jigi allegat illi tali fondi kienu qed jintuzaw ghall servizzi ta' abort, liema ghajjnuna finanzjarja kienet proibita mill-legislazzjoni Amerikana (fol 12).
7. Jirrizulta illi l-ghaqda intimata Gift of Life, abbazi ta' tali rappurtagg u decizjoni tas-Senat Amerikan fil-konfront ta' '**The Planned Parenthood Federation of America**' (PPFA) kif ukoll informazzjoni illi kellha fil-pussess taghha, niedet kampanja fil-konfront tal-ghaqda rikorrenti Malta Gay Rights Movement, fejn allegat illi flejjes illi huma ottjenew biex jirredigu legislazzjoni li eventwalment wasslet ghall-abbozzar u ratifikazzjoni tal-Att dwar l-Identita' tal-Generu, l-Espressjoni tal-Generu u l-Karatteristici tas-Sess (Kap 540), kienu flejjes illi gew maghmulha mil-ghoti tas-servizz ta' l-abort u l-qtil tat-tfal u allegat illi tali flejjes kienu qed jintuzaw sabiex l-MGRM tibda tintuza minn "Planned Parenthood" hawn Malta sabiex jigi introdott l-abort f'Malta.
8. Jirrizulta, mill-provi prodotti, illi l-ghaqda rikorrenti Malta Gay Rights Movement, fis 6 ta' Awissu 2010, dahhlet fi '**Advocacy Flexi Fund Funding Agreement**' mal-federazzjoni '*International Planned Parenthood Federation*', fejn flejjes fl-ammont ta' ghaxart elef

Dollaru Amerikan (\$10,000), illi kienu ser jigu lilha moghtija b'donazzjoni mill-'*David and Lucille Packard Foundation*', kienu gew moghtija ghas-segwenti: (fol 69)

*“This grant is provided for the project titled A Gender Identity Law for Malta/ the Grantee may not use the funds for any other purpose unless written permission has been received from the IPPF.”*

9. Jirrizulta illi f'Dicembru 2010, gie redatt rapport minn Dr Neil Falzon ghall-ghaqda rikorrenti, intitolat '**A Proposed Gender Identity Act for Malta**', fejn saret referenza ghall-Att XVIII tas-sena 2004 fejn il-Kodici Civili gie emendat biex inghata dritt lill persuni transgender jaghmlu annotazzjonijet fic-certifikat tat-twelid taghhom u f'tali rapport biex propost abbozz ta' Ligi sabiex jizviluppa aktar l-principji mibdija bl-Att fuq imsemmi u jipprovdi ghall-drittijiet godda.
10. Jirrizulta illi permezz ta' Att Nru XI tas-sena 2015 intitolat **Att dwar l-Identita' tal-Generu, l-Espressjoni tal-Generu u l-Karatteristici tas-Sess** (Kap 540), l-proposti u ideat redatti fir-rapport redatt mill-ghaqda rikorrenti gew riflessi fl-abbozz ta' Ligi finali, fejn l-ghaqda rikorrenti kienet ukoll involuta fid-diskussjonijiet li wasslu ghar-ratifika ta' tali ligi.

## **6. Konsiderazzjonijiet li jwasslu ghall gudizzju ta' dina l-Qorti**

### **A - Eccezzjoni Preliminari**

1. Il-Qorti, qabel ma tghaddi ghall-konsiderazzjonijiet dwar il-meritu, tghaddi s-segwenti kummenti dwar l-ewwel eccezzjoni ta' l-intimat, ossija n-nullita' tar-rikors promotur stante illi l-format stabbilit mill-Ligi ma giex segwit.
2. Il-Qorti tosserva, l-ewwel u qabel kollox, illi l-formalitajiet huma mehtiega, mhux biex parti tabbuza mill-ksur taghhom biex tipprova timmina azzjoni legittima kontribhom, izda sabiex taghti direzzjoni dwar kif ghandhom isiru u jigu redatti certi atti.
3. Jirrizulta car illi d-dettam rikjest fl-Artikolu 174 tal-Kap 12, kif fuq deskritt, gie onorata fil-kontenut tar-rikors promotur, u ghalhekk ir-rikorrent ottempera ruhu ma dak rikjest mill-Ligi.
4. Jirrizulta wkoll illi l-format stabbilit fil-Formula Nru 31 fl-Iskeda B tal-Kap 12 ma jirriflettix il-hsieb tal-legislatur fl-artikolu 174 fuq imsemmi, u certament ma ghadhux aktar vijabbli fil-presentazzjoni ta' kawzi bhal din odjerna quddiem dina l-Qorti, fejn, ghalkemm il-Ligi tesigi li tinstema sommarjament, certament ma tista' bl-ebda mod tigi meqjusa bhala procedura sommarja, in vista tas-serjeta u n-natura taghha, u certament t-talba tar-rikorrenti ma setghet qatt tigi limitata fl-erbgha linji illi tistabilixxi l-formula fuq imsemmija.
5. Ghalhekk, l-ewwel eccezzjoni ma timmeritax illi tigi akkolta.

### **B - Eccezzjoni fil-meritu – “fair comment”**

6. Jirrizulta, mill-provi prodotti, illi l-ghaqda intimata, illi ddikjarat ruhha bhala li ghandha posizzjoni kontra l-abort filwaqt illi allegat illi l-ghaqda rikorrenti ghandha posizzjoni favur l-abort, waslet ghall konkluzjoni illi la darba l-federazzjoni '*International Planned Parenthood Federation*' (IPPF) kellha fi hdanha l-assocjazzjoni Amerikana '*The Planned*

*Parenthood Federation of America*’ (PPFA), liema ghaqda kienet, fost affarjiet ohra, stqarret illi fis-sena 2011 ghamlet mal-“330,000 abortion-related services”, dak kien ifisser illi meta l-ghaqda rikorrenti irceviet fondi sabiex tirredigi rapport dwar l-Identita’ tal-Generu minghand l-IPPF, dawk il-fondi tal-Planned Parenthood u kienu rizultat ta’ qtil ta’ trabi.

7. Jirrizulta, madanakollu, mill-provi prodotti quddiemha, partikolarment mill-ghaqda rikorrenti, illi meta fis-sena 2010 irceviet fondi mill-‘*International Planned Parenthood Federation*’ tali fondi ma kellhom ebda konnessjoni mal-ghaqda Amerikana fuq imsemmija, u kienu fondi mahruga mill- **David and Lucille Packard Foundation** li kienet qieghda tghaddi tali flejjes unikament sabiex jigi redatt ir-rapport intitolat ‘**A Gender Identity Law for Malta**’.
8. Jirrizulta, ghalhekk, a differenza ta’ dak illi allega diversi drabi l-ghaqda intimata, permezz tal-hafna ‘Facebook posts’ taghha, il-flejjes illi l-ghaqda rikorrenti inghatat sabiex tiffinanzja il-progett taghha ma kienux flejjes la tal-ghaqda Planned Parenthood, presumibbilment (PPFA), u wisq anqas rizultanti mill-introitu minn abort kif minnha allegat, kif riedet taghti x’jifhem l-intimata, kemm fil-posts taghha kif ukoll fix-xhieda tar-rappresentant taghha Paul Vincenti moghtija varji drabi quddiem dina l-Qorti.
9. Il-Qorti tifhem illi s-suggett tal-abort u l-introduzzjoni-jew-le ta’ l-abort gewwa Malta huwa suggett ta’ interess pubbliku u suggett illi jista jwassal ghall-posizzjonijiet kontrastanti u, possibbilment, qawwija da parte ta’ min jemmen li ma ghandhux jidhol jew inkella ghandu jidhol l-abort gewwa Malta, madanakollu dana ma jfissirx illi wiehed jista jaqbad u jibni argumentazzjoni u jasal ghall konkluzjoni kontra agir ta’ entita’, f’dan il-kaz l-ghaqda rikorrenti, fuq cirkostanzi remoti hafna u li certament mhux sostanzjalment korretti, bhal fil-kaz odjern.
10. Dana qieghed jinghad ghax l-ghaqda intimata ibbazat l-argumentazzjoni taghha kollha fuq il-fatt illi l-ghaqda Amerikana *The Planned Parenthood Federation of America* qieghda taghmel flus mis-servizz ta’ abort u, la darba tali ghaqda hija membru tal-federazzjoni *International Planned Parenthood Federation*, dak ifisser illi kwalsiasi flejjes illi l-ghaqda rikorrenti irceviet minghand l-*International Planned Parenthood Federation* kienu flejjes generati mill-qtil ta’ trabi permezz ta’ l-abort.
11. Jirrizulta car, mill-provi prodotti, illi tali asserzjonijiet u konkluzjonijiet da’ parte ta’ l-ghaqda intimata, huma kemm skorretti stante l-flejjes gew mill-Packard Foundation u illi l-ghaqda Amerikana li dwarha tant tishaq l-ghaqda intimata hija attwalment wahda mill-mija u wiehed u erbghin (141) ghaqda li jiffurma l-*International Planned Parenthood Federation*. L-ghaqda naqset ukoll milli tinforma wkoll illi l-istess *International Planned Parenthood Federation* ghandha, bhala vizjoni, dik illi telimina d-diskriminazzjoni bejn is-sessi – dritt fundamentali ili huwa protett kemm mill-Kostituzzjoni Maltija, kif ukoll mill-Konvenzjoni Ewropeja (ECHR) u l-Konvenzjoni ta’ Nazzjoni Uniti (UN).
12. **Il-Qorti taghlaq billi tosserva illi kullhadd ghandu dritt ghall-opinjoni tieghu u ghandu wkoll id-dritt illi jxandarha u jiddefendiha fil-pubbliku, imma hadd ma ghandu d-dritt illi jghawweg il-fatti bi hsara lill min huwa kontrih sabiex jinfluwenza lill min ghandu fiducja fih u jaghti stampa ta’ fatti illi ma huwiex minnhom.**

## 7. 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 eżempju:*

- *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 jagħmel 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 tagħmilha tagħha, tagħmel ukoll referenza għall-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 well 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-segwent:

*"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 jadempilha 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 taht 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-segwent:

*"L-interess biex wieħed jagixxi jista' jkun pekunarju u anke morali, purche' guridiku, jigifieri korrispondenti għall-lezzjoni ta' veru dritt; u għalhekk ittra mibghuta 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 tal-Qorti Civili presjeduta mill-Onor. Imhalled 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` tagħha, lejn min tkun diretta u lil min tkun mahsuba tilhaq u x'danni konsegwenzjali diretti jew indiretti tista' tiggera"*.

7. Mehud dana kollu in konsiderazzjoni, il-Qorti tagħmel is-segwent osservazzjonijet:

- a. L-ghaqda rikorrenti, hija certament "persuna" pubblika, stante illi fil-passat hadet posizzjonijet dwar varji kwistjonijet ta' interess pubbliku u certament ghandha titqies bhala entita pubbliku illi dwarha kullhadd jista jtkellem u jikkummenta u ghalhekk ghandha tkun esposta ghal kritika ghal-agir u l-azzjonijet tagħha, possibbilment anke sal-livell estrem accettat għall-persuna politika;
- b. La darba ir-rikorrenti hija meqjusa bhala persuna pubblika, il-Qorti tifhem illi l-ghan ewlieni tagħha ta' azzjoni ta' libell huwa illi jirrettifika kwalsiasi informazzjoni skorretta illi tkun inharget kontra tagħha u li, fil-pubbliku, tigi skagunata u mehlusa minn kwalsiasi akkuza illi tkun saret kontra tagħha infondament;
- c. Ir-rikorrenti, fil-kaz odjern, di fatti, ma kkwantifikat ebda danni finanzjarji illi setghet sofriet rizultat ta' dak imxandar.
- d. L-ghaqda intimata Gift of Life Malta hija ghaqda illi thaddan twemmin favur l-hajja u ghalhekk kontra l-introduzzjoni tal-abort f'Malta, liema twemmin hija temmen b'aqwwa kbira u timmormuovih b'konvinzjoni kbira, anke tramite ir-rappresentant tagħha Paul Vincenti.
- e. L-ghaqda intimata, li hija ghaqda volontarja intiza biex tghin lis-socjeta u tipprowuovi il-hajja, madanakollu, ghazlet illi tagħmel asserzjonijet fil-konfront ta' l-ghaqda rikorrenti ibbazati fuq fatti sostanzjalment skorretti, u wasslet għall-konkluzjonijet illi l-ghaqda rikorrenti hija favur l-introduzzjoni tal-abort gewwa Malta filwaqt illi dana irrizulta zbaljat stante illi, kif stqarret Gaby Callejja, sa llum l-ghaqda ma ghandha ebda posizzjoni dwar l-abort, a differenza tagħha personalment, fejn stqarret illi hija favur l-abort.

- f. L-Qorti ma tistax ma tosservax illi ghalkemm f'socjeta demokratika bhalma hija dik Maltija, l-fatt illi kullhadd ghandu d-dritt illi jesprimi liberament il-veduti tieghu u jxandar it-twemin tieghu hija liberta' illi ghandna nhaddnu u niprotegu, dana ma jfissirx illi kullhadd ghandu wkoll id-dritt illi jxandar affarjiet mhux minnhom fil-konfront ta' terzi, w il-Qorti ma tistax ma tosservax illi dak allegat mill-ghaqda intimata juri illi hija riedet toskura lill-ghaqda rikorrenti, partikolarment fil-kwistjoni illi tirrigwarda l-abort u dana ma jistax ma jigix punit.
  - g. Finalment, il-Qorti tosserva illi l-allegazzjonijiet illi saru kontra l-ghaqda rikorrenti, ghalkemm mhux daqstant odjuzi u b'konnotazzjonijet kriminali u certament ibbazati fuq l-opinjoni onesta tal-ghaqda intimata, kienu tali illi certament oskuraw r-reputazzjoni tal-ghaqda rikorrenti.
8. Tenut kont ta' dawna l-fatti kollha, il-Qorti tqis illi jkun opportun li d-danni jigu kkwantifikati fl-ammont ta' elf Euro (€1,000).

## **Konkluzjoni**

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi semghet rat it-trattazzjoni ta' l-abbli difensuri tal-partijiet

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

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tichad** l-eccezzjonijiet kollha ta' l-intimat ,

**Tilqa** t-talba tar-rikorrenti kif dedotti u

**Tiddikjara** illi l-allegazzjonijiet illi saru mill-intimat fid-30 ta' Settembru 2015, fid-1 ta' Ottubru 2015 u fl-2 ta' Ottubru 2015 kif ahjar deskritti fir-rikors promotur kienu libelluzi u malafamanti fil-konfront tar-rikorrenti u ghalhekk,

**Tikkundanna** lill-ghaqda intimata Gift of Life Malta ihallas lill-ghaqda rikorrenti Malta Gay Rights Movement is-somma ta' elf Euro (€1,000) in linea ta' danni sofferti minnha.

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

**Magistrat Francesco Depasquale**

**Rita Sciberras**  
Deputat Registratur