QORTI TAL-APPELL

(Sede Inferjuri)

Onorevoli Imhallef Dr. Joanne Vella Cuschieri

B.A. Mag. Jur. (EUR. LAW.), LL.D.

Seduta tal-Gimgha, 11 ta' Ottubru, 2019

Appell numru: 191/17FDP

Wara sentenza tal-Onorabbli Qorti tal-Magistrati

datata 14 ta' Marzu, 2019

Nexia BT Limited (C46322), BT International Limited, BTU Management Limited, Nexia BT Advisory Services Limited, Nexia BT Consulting Limited, Brian Tonna, Karl Cini u Manuel Castagna personalment u kif ezercjenti l-kummerc bhala 'Nexia BT'

vs.

Alex Attard u Joseph Micallef sive Joe Mikallef

Il-Qorti

1. Illi dan huwa appell minn decizjoni tal-Onorabbli Qorti tal-Magistrati datata 14 ta' Marzu, 2019 fejn gie deciz kif isegwi:

'Il-Qorti,

Wara illi rat il-provi kollha prodotti quddiemha, u

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet, tghaddi biex taqta' u tiddeciedi l-kaz billi

***Tilqa'** l-eccezzjonijiet kollha ta' l-intimati, u għalhekk*

***Tichad** it-talbiet attrici.*

Spejjez tal-proceduri odjerni ghandhom ikunu kollha a kariku tar-rikorrenti.'

2. Illi d-decizjoni appellata nghatat wara li l-appellanti Nexia BT Limited (C46322), BT International Limited, BTU Management Limited, Nexia BT Advisory Services Limited, Nexia BT Consulting Limited, Brian Tonna, Karl Cini u Manuel Castagna personalment u kif ezercjenti l-kummerc bhala 'Nexia BT'ressqu rikors quddiem l-Ewwel Onorabbli Qorti kif isegwi:

'Prevja dikjarazzjoni illi intom, jew min minnkom, responsabbli ta' inġurja u malafama fil-konfront tar-rikorrenti b'dikjarazzjonijiet li intom għamiltu fl-artikolu tal-10 ta' Lulju 2017 miktub u ippubblikat minnkom, jew min minnkom, fil-gurnal In-Nazzjon bit-titlu 'L-impjegati ta' Nexia BT jirċievu l-

paga b'ċekkijiet maħruġa minn kumpannija oħra stante li għamiltu allegazzjonijiet u dikjarazzjonijiet fil-konfront tar-rikorrenti li tafu li huma jew bid-diliġenza xierqa stajtu tkunu tafu li huma foloz u li x'aktarx jagħmlu ħsara lil xi negozju jew proprjetà oħra tar-rikorrenti, kif jirrizulta aħjar waqt it-trattazzjoni tal-kawża; tħallsu lir-rikorrenti dik is-somma li tiġi likwidata minn din l-Onorabbli Qorti ai termini tal-Artikolu 29 tal-Att dwar l-Istampa (Kap 248 tal-Ligijiet ta' Malta).'

Il-Qorti rat l-artikolu msemmi fir-rikors jinsab esebit a fol. 2 u 3 tal-process tal-Ewwel Qorti.

3. Ghal din it-talba l-intimati Alex Attard u Joseph Micallef sive Joe Mikallef prezentaw ir-risposta taghhom kif isegwi:

'Illi t-talbiet rikorrenti huma nfondati fil-fatt u fid-dritt u għandhom jiġu miċħuda bl-ispejjez kontrihom ghas-segwenti ragunijiet:

1. *Li l-artikolu lamentat tal-10 ta' Lulju 2017 fil-gurnal In-Nazzjon bit-titlu 'L-impjegati ta' Nexia BT jircievu l-paga b'cekkijiet mahruga minn kumpannija ohra mhux libelluz u/jew malafamanti fil-konfront tar-rikorrenti, izda jikkonsisti biss f'fatti verifikabbli u/jew kummenti dwar kwistjonijiet fl-interess pubbliku li għalhekk, huma fair comment, kritika accettabbli f'socjeta' demokratika u ezercizzju tal-liberta' tal-espressjoni sancita, inter alia, mill-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;*

2. *Li mingħajr pregudizzju ghas-suespost, ma jirrizultax li kien hemm*

kummenti u/jew kontenut ieħor ta' natura libelluza u/jew malafamanti fil-konfront tar- rikorrenti.'

3. Illi d-decizjoni tal-Ewwel Onorabbli Qorti li waslet sabiex tichad it-talbiet tar-rikorrenti appellanti hadet in konsiderazzjoni l-provi u l-konkluzjonijiet segwenti qabel waslet ghad-decizjoni kif isegwi:

'2. Provi

*1. Semgħet ix-xhieda tar-rikorrent **Manuel Castagna** moghtija fil-15 ta' Jannar 2018 u rat id-dokumentazzjoni minnu esebita.*

2. Rat illi fit 12 ta' April 2018 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

*3. Semgħet ix-xhieda ta' **Joe Mikallef** moghtija fit 12 ta' Novembru 2018 in eżami u kontro eżami.*

*4. Semgħet ix-xhieda ta' **Alex Attard** moghtija fit 12 ta' Novembru 2018 in eżami u kontro eżami.*

5. Rat illi fis-17 ta' Jannar 2019 l-intimati ddikjaraw illi ma kellhomx aktar provi.

6. Semgħet it-trattazzjoni finali ta' l-abbli difensuri tal-partijiet illi saret fl-14 ta' Frar 2019, wara liema data l-kawża ġiet differita ghas-sentenza

ghallum.

3. Konsiderazzjonjiet fattwali

1. Jirrizulta, mill-provi prodotti, illi s-socjetajiet rikorrenti, kif ukoll ir-rikorrenti, fil-kapacità personali tagħhom ezercjenti fil-kummerc bħala Nexia BT, jimpjegaw diversi persuni sabiex jassistuhom f'xoghlhom.

2. Jirrizulta illi, bħala prassi adoperata mill-varji kumpanniji, l-impjegati kollha jithallsu tramite 'direct transfer' minn kont bankarju tas-socjeta' relattiva ghall-kont bankarju ta' l-impjegat partikolari.

3. Jirrizulta illi fix-xahar ta' Gunju 2017, a differenza ta' dina l-prassi kif fuq spjegata, zewg impjegati tas-socjeta' Nexia BT Limited kien thallsu permezz ta' cekk flok permezz ta' direct transfer.

4. Jirrizulta illi dana kien dovut ghal fatt illi zewg impjegati partikolari kienu tterminaw l-impjieg tagħhom u għalhekk kellhom jithallsu l-paga lilhom dovuta sa dakinhar illi tterminaw l-impjieg tagħhom, illi kien qabel it-tmiem tax-xahar meta l-paga generalment tinhareg tramite 'direct transfer'.

5. Jirrizulta illi kien għalhekk illi, f'dawn l-istanzi, socjetà Nexia BT hareg zewg cekkijiet lil dawna z-zewg impjegati partikolari illi kienu tterminaw l-impjieg tagħhom.

6. Jirrizulta illi fl-10 ta' Lulju 2017, l-intimat Joe Mikallef kiteb artikolu fuq il-gurnal In-Nazzjon, li tiegħu l-intimat Alex Attard kien l-editur, fejn, wara illi l-istess Mikallef kien gie avvicinat minn impjegati tas-socjeta' Nexia BT Limited u muri cekk mahrug ghas-salarji tagħhom,

huwa kiteb l-artikolu meritu tal-kawza odjerna.

7. Jirrizulta, mix-xhieda kemm ta' Joe Mikallef stess kif ukoll ta' Alex Attard, dak iz-zmien editur tal-gazzetta, illi huma kkonfermaw illi tali cekkijiet inhargu lil tali persuni bhala l-paga tagħhom, u huma raw ic-cekk illi kien inhareg.

8. Jirrizulta illi, kif kellhom kull dritt jaghmlu, l-intimati ma' identifikawx is-sors ta' l-istorja tagħhom, filwaqt illi stqarrew ukoll illi s-sorsi ma xtaqux illi jaghtuhom kopja tac-cekk stante illi bezghu illi jigu identifikati b'xi mod.

9. Jirrizulta, fix-xhieda moghtija minn l-uniku xhud prodott mir-rikorrenti, ossija Manuel Castagna, illi kien minnu kkonfermat li fix-xahar ta' Gunju 2017 inhargu cekkijiet lil xi impjegati tas-socjeta' Nexia BT.

4. Konsiderazzjonijiet Legali

1. Jirrizulta illi d-difiza principali ta' l-intimati huwa illi dak li nkiteb kien ibbazat fuq fatti verifikabbli u fair comment accettabbli f'socjeta' demokratika bhalma hija dik Maltija.

2. Jirrizulta illi, għalhekk ikun opportun illi l-Qorti, qabel ma tagħmel il-konsiderazzjonijiet finali taghha, għandha taghmel is-segwenti riflessjonjiet.

3.Fuq id-dritt tal-gurnalist illi jirrapporta dak li jidhirlu xieraq u korrett, fil-kawza 'Axel Springer AG vs Germany', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, il-Qorti ghamlet referenza ghall-principji generali li jirregolaw il-liberta' ta'

l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li għandu jitlahaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tiegħu protetta, 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.

4. Fuq ir-rwol li għandu jkollu gurnalist fil-qasam tal-liberta' ta' l-espressjoni, il-Qorti tgħid 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".

80. This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them.

81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.

5. Il-pozizzjoni mportanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni ghandha, madanakollu, tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da parte tal-gurnalist, tghid hekk:

82. However, Article 10 § 2 of the Convention states that freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist

depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

6. In vista ta' dawna l-fatti, il-Qorti ghandha tiehu illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u d-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem nidiet sitt kriterji mportanti sabiex jigi assikurat illi, kif tghid il-Qorti, "the right to freedom of expression is being balanced against the right to respect for private life".

7. Dawna l-kriterji kif stabbiliti huma s-segwenti:

(α) Contribution to a debate of general interest

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

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

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another

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

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

(c) Prior conduct of the person concerned

92. The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous

occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.

(d) Method of obtaining the information and its veracity

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

(e) Content, form and consequences of the publication

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

8. Finalment, in vista tal-fatt illi r-rikorrent huwa persuna politika, dwar il-livel ta' kritika li politiku tist'a ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza Ligens vs Austria, u abbracjata mill-Qorti Maltin, intqal illi:-

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.

9. Il-Qorti thoss illi ghandha ukoll taghmel referenza ghal dak illi qalu l-qrati taghna, dwar gurnalizmu nvestigattiv, u għalhekk issir referenza ghal illi stqarret il-Qorti tal-Appell fil- kawza ***Dr. Louis Galea vs Dr. Joe Mifsud*** *deciza fit-3 ta' Frar, 2012:*

"gurnalizmu investigattiv għandu jinghata ampja protezzjoni f'socjeta' demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqaghlu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa' allegazzjoni mhux pruvata kif trid il-Ligi. F'dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista' wkoll ikun tollerat."

10. Dwar id-difiza ta' 'fair comment, il-Qorti taghmel referenza ghas-sentenza ***Erla Hlynsdottir 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.

11. 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."

12. 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.

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

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jingħad mill-Qrati tagħna li, biex id-difiżà tal-kumment ġust tkun tgħodd, jeħtieg 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 gustifikabbli jew mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux zebliħ, tgħajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'ħazen jew bil-ħsieb preciz li jwegga' lil dak li jkun.

14. 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.

5. Konsiderazzjonijiet Finali

1. Jirrizulta, mill-provi prodotti quddiem dina l-Qorti, illi s-socjeta Nexia BT Limited, f'Gunju 2017, hallset lill zewgt impjegati taghha is-salarji tagħhom permezz ta' cekk flok permezz ta' 'direct bank transfer' kif dejjem kien isir.

2. Jirrizulta illi dana il-fatt huwa dak illi wassal sabiex l-artikolu meritu tal-kawza odjerna jinkiteb.

3. Jirrizulta illi ghalkemm ir-rikorrenti jikkontendu illi hadd mill-impjegati ma qatt lehhen maghhom l-inkwiet tagħhom dwar l-impjieg tagħhom mas-socjeta rikorrenti, a differenza ta' dak illi kif jidher indikat mill-intimati fl-artikolu tagħhom, jirrizulta mill-banda l-ohra illi l-bazi ta' l-istorja ta' l-intimati, ossja illi impjegati thallsu tramite cekkijiet, kienet wahda sostanzjalment korretta, peress illi bbazata fuq fatti stabbiliti mill-intimati stess u, del resto, ammessi mir-rikorrenti stess.

4. Jirrizulta, għalhekk, illi dak illi wassal ghall-istorja meritu tal-kawza odjerna kienu fatti korretti u għalhekk l-intimati kellhom kull dritt illi

jiktbu l-artikolu meritu tal-kawza odjerna, u dak hemm miktub huwa sostanzjalment korrett u għalhekk ma jistax jitqies bhala libelluz u/jew malafamanti fil-konfront tar-rikorrenti.

5.Jirrizulta illi s-socjeta Nexia BT, fix-xhur u snin ta' qabel, kienet ilha tissemma in konnessjoni ma' investigazzjonijiet varji illi kienu qed isiru kemm lokalment kif ukoll barra minn Malta in konnessjoni mal-hekk imsemmija 'Panama Papers', u għalhekk kienet socjetà illi dwarha l-intimati kellhom kull dritt illi jikkummentaw fl-interess pubbliku.

4. Il-Qorti rat l-atti kollha tal-kawza appellata;

5. Rat illi r-rikorrenti kollha appellaw mis-sentenza suesposta u ressqu tliet aggravji li ser jigu trattati minn din il-Qorti separatament;

6. Semghet it-trattazzjoni tal-abbli difensuri tal-partijiet fis-seduta tal-21 ta' Gunjui, 2019 u ddifferiet l-appell ghad-decizjoni ghal-lum;

7. Illi l-ewwel aggravju jaqra kif isegwi:

'Illi l-ewwel aggravju tar-rikorrenti appellanti huwa car u manifest u jikkonsisti mill-fatt li l-konkluzjoni tal-Ewwel Qorti, ossia li l-mertu tal-artikolu in kwistjoni kienu fatti korretti, hija wahda b'kull dovut rispett zbaljata u li ma tirrizultax mill-provi prezentati. Illi abbazi tal-principju latin "incumbit probation ei qui dicit non ei qui negat", f'materja ta'

ingurja huwa l-oneru tal-intimati appellati li jgibu prova ta' dak li gie allegat minnhom fl-artikolu in kwistjoni. Ghaldaqstant kien l-oneru taghhom li jgibu prova dwar l-allegazzjonijiet ta' fatt li saru minnhom fl-artikolu in kwistjoni u cioe' li bosta impjegati ta' Nexia BT ircevew il-paga b'cekk u li dawn ic-cekkijiet inhargu minn kumpanija ohra, u li l-andament tal-operat tar-rikorrenti 'mar il-bahar'. Kif hareg car mill-provi prodotti, kienu biss zewg impjegati li inghatathilhom il-paga permezz ta' cekk, b'differenza ghall-implikazzjoni moghtija mill-intimati appellati li kienu 'bosta' impjegati li gew moghtija l-paga taghhom b'dan il-mod. L-Ewwel Qorti naqset ukoll milli taghti konsiderazzjoni ghall-fatt li l-intimati appellati naqsu milli jsemmu li din il-procedura giet addottata propju minhabba li z-zewg impjegati in kwistjoni kien qed jigi tterminat l-impjieg taghhom.'

L-aggravju jkompli jemfasizza fuq il-punti segwenti:

a) Nuqqas ta' prova li c-cekkijiet hargu minn socjeta' ohra kif allegat fl-artikolu;

b) L-implikazzjoni tal-kelma 'impjegati' fl-artikolu meta rrizulta li kienu biss zewg impjegati li thallsu b'cekk datat 16 ta' Gunju ghar-raguni li kien gie yterminat l-impjieg taghhom li fost ohrajn tat x'tifhem lill-qarrej li kien hemm xi kumpanija ohra li qed tintuza minhabba problema ta' likwidita' jew problemi ohra bhal xi mandat tal-Qorti jew likwidazzjoni tal-kumpanija. Dan il-kliem skont l-appellanti kkawza malfama ghall-effett li seta' kellu fuq l-impjegati tal-

appellanti li fihom nholqot bizgha dwar l-impjieg taghhom kif ukoll telf ta' klijenti kemm ezistenti kif ukoll prospettivi.

L-appellanti jaghmlu wkoll referenza ghall-gurisprudenza sabiex isahhu l-aggravju taghhom liema gurisprudenza din il-Qorti hadet konjizzjoni taghha.

Illi l-appellati fir-risposta taghha, fir-rigward ta' dan l-ewwel aggravju jsostnu li l-livell ta' oneru ta' prova fl-atti odjerni mhux dak li qed jippretendu l-appellanti stante li dak pretiz mill-appellanti skont l-appellati huwa aktar gholi partikolarment b'referenza ghall-principju *incumbit probatio ei qui non ei qui negat* ikkwotat mill-appellanti. Isostnu li l-appellanti jesageraw meta jaghmlu hafna emfasi fuq il-kelma 'bosta' b'referenza ghall-impjegati. Isostnu li kien bizzejjed ghalihom li jippruvaw li huma raw ic-cekkiijiet u li vverifikawhom bhala veritijieri u li huma hassew li s-sors taghhom li kien impjegat u jsostnu li c-cekkijiet flimkien mas-sors kienu provi sostanzjali u stante li dehrilhom li kienet ta' nteress pubbliku ghaddew sabiex jippubikaw l-artikolu. L-appellati jinsistu li l-konkluzjoni tal-Ewwel Qorti li l-bazi tal-istorja taghhom, ossia illi mpjegati thalsu tramite cekkijiet, kienet wahda sostanzjalment koretta ghandha tigi kkonfermata minn din il-Qorti. Isostnu li huwa bizzejjed fi proceduri bhal dawk odjerni li titressaq il-prova li l-istorja kienet wahda sostanzjalment korretta. L-appellati jsostnu wkoll li fl-istess artikolu huma kellhom kull dritt

ai termini tal-artikolu 10 tal-Kovenzjoni dwar id-Drittijiet tal-Bniedem li jsemmu l-opinjoni taghhom.

Illi minn analizi tal-provi kollha fl-atti jirrizultaw il-fatti segwenti:

i. Illi verament fix-xahar ta' Gunju 2017 nhargu zewg cekkijiet mill-kumpanija Nexia BT bhala pagament lil zewg impjegati;

ii. Illi ghall-kuntrarju ta' dak li jesponi l-artikolu ppubblikat mill-appellati, ic-cekkijiet in kwistjoni kienu datati 16 ta' Gunju, 2019 u mhux l-ahhar tax-xahar;

iii. Illi ghall-kuntrarju ta' dak li jesponi l-artikolu ppubblikat mill-appellati partikolarment anki fit-titolu tieghu fl-ewwel faccata tal-gazzetta, ic-cekkijiet ma kienux 'mahruga minn kumpanija ohra' li ma kinitx in-Nexia BT msemmija fl-artikolu u dan johrog evidenti mill-kopja tac-cekkijiet esebiti minn Manuel Castagna a fol. 32 et seq tal-process;

iv. Illi mix-xhieda ta' Joe Mikallef a fol. 69 et seq tal-process jirrizulta li persuna wahda marret tkellmu dwar ic-cekk li kienet irceviet u wrietu cekk. Skont l-istess Joe Micallef din il-persuna allegat li ma kinitx wahedha li rceviet cekk izda ma qaltlux li l-impjegati kollha rcevew cekk bhala hlas tal-paga filwaqt li s-soltu huma kienu jithallsu permezz ta' 'direct credit'. Minn imkien fl-atti ma jirrizulta li din il-persuna nfurmat lill-appellat Joe Mikallef li c-cekk kien rizultat li l-impjieg taghha kien gie terminat kif irrizulta

fil-mori tas-smiegh partikolarment mix-xhieda ta' Manuel Castagna;

v. Illi mix-xhieda ta' Joe Micallef u ta' Alex Attard jirrizulta li huma raw biss b'ghajnejhom cekk wiehed u qaghdu fuq il-kelma tas-sors li kien hemm aktar cekkijiet;

vi. Illi minn analizi tal-kopja tac-cekkijiet esebiti a fol. 32 tal-process huwa facilment verifikabbli li c-cekkijiet huma mahruga minn Nexia BT u mhux minn kumpanija ohra dan anki jekk wiehed wara li jarah ma jiehux kopja tieghu. Joe Mikallef jikkonferma fix-xhieda tieghu a fol. 74 et seq li huwa kien jaf li l-persuna li marret tkellmu u wrietu c-cekk kienet tahdem ma' Nexia BT. Mistoqsi jekk huwa dahalx fid-dettall ta' min kien l-*employer* ta' din il-persuna jghid kif isegwi:

'F'dik l-okkazzjoni partikolari iva. L-impjegata ta' Nexia BT u c-cekk nghatat kien minn kumpanija ohra.' (fol. 75)

Aktar 'il isfel fl-istess xhieda izda jikkontradixxi ruhu u jghid:

'Jien mhux ser noqghod nidhol f'kumpanija u kumpanija . . .'

Jixhed ukoll li ma jaghrafx ic-cekkijiet esebiti bhala li wiehed minnhom gie muri lilu mis-sors.

Aktar 'il isfel fl-istess xhieda meta rega' gie mistoqsi jekk rax li kienet Nexia BT Limited li harget ic-cekkijiet jirrispondi:

'Le . . . ma . . Onestament le ma rajtx. Jiena li kien jinteressani hija l-istorja fiha nnifisha li dawn kienu qed jiehdu l-paga taghhom b'certu mod u tfacca cekk minflok paga.'

Meta rega mistoqsi jekk ivverifikax dwar il-kumpanija l-ohra msemmija fit-titolu tal-artikolu jirrispondi:

'Ismaghni . . . ma dhaltx fiha ghaliex ai fini tal-artiklu tieghi dik ma kinitx tinteressani.' (fol. 78)

vii. Illi mill-provi fl-atti partikolarment mix-xhieda ta' Manuel Castagna a fol. 18 et seq tal-process u d-dokumentazzjoni esebita minnu rrizulta li fix-xahar ta' Gunju 2017 kienu biss iz-zewg cekkijiet in kwistjoni li nhargu bhala paga fil-bqija l-impjegati kollha kienu thallsu kif kien in-norma permezz ta' 'direct credit'. Kif gia ssemma' dan ix-xhud ikkonferma li z-zewg cekkijiet in kwistjoni nhargu stante li kien gie terminat l-impjieg taz-zewg persuni partikolari qabel l-ahhar tax-xahar u kienet il-prassi li f'dawn ic-cirkustanzi jinhareg cekk u mhux 'direct credit' bhala transazzjoni finali ta' hlas ta' paga dovuta.

viii. Skont ix-xhud Joe Mikallef huwa ddecieda li fil-kumpanija Nexia BT qed jixeghlu l-bozoz homor ghaliex il-procedura tal-hlas

tal-pagi permezz ta' 'direct debit' f'dan il-kaz partikolari ma kinitx giet segwita.

ix. Dwar l-incertezza msemmija fl-artikolu kontestat ix-xhud Joe Mikallef a fol. 77 et seq tal-process jghid li hu kien qed jirreferi ghall-fatt li f'gurnata partikolari:

'il-haddiema . . . certi haddiema jinghataw cekk minflok il-procedura tas-soltu, ghalihom l-incertezza kompliet tizdied.'

x. Jirrizulta li l-appellat l-iehor Alex Attard fix-xhieda tieghu kkonferma li ghalkemm huwa ra c-cekk, hu ma kienx kellem lis-sors u qaghad fuq dak li kien qallu Joe Mikallef.

Illi fis-sustanza l-aggravju tal-appellanti jikkontendi li l-Qorti zbaljat meta ddecidiet li 'l-bazi ta' l-istorja ta' l-intimati, ossija illi mpjegati thallsu tramite cekkijiet, kienet wahda sostanzjalment korretta, peress illi bbazata fuq fatti stabbiliti mill-intimati stess u, del resto, ammessi mir-rikorrenti stess.'

Illi din il-Qorti taqbel mal-Ewwel Onorabbli Qorti li dik il-parti tal-istorja bbazata fuq il-hlas tal-impjegati permezz ta' cekkijiet hija sostanzjalment korretta u bbazata fuq fatti stabbiliti mill-intimati, izda jirrizulta wkoll lil din il-Qorti li l-Ewwel Onorabbli Qorti njorat ghal kollox il-kliem li tant inghataw prominenza fl-artikolu tant li ssemmew ukoll fit-titolu tieghu u cioe' illi l-impjegati thallsu **'b'cekkijiet mahruga minn kumpanija ohra'** kliem li rega' gie

ripetut fl-ewwel paragrafu tal-artikolu fuq l-ewwel faccata tal-gazzetta in-Nazzjon (ara fol. 2 tal-process).

Jirrizulta lil din il-Qorti, minn annalizi tal-provi fl-atti kif suesposti li l-intimati appellati ma kellhom l-ebda bazi fattwali sabiex jindikaw fl-artikolu in kwistjoni li l-impjegati thallsu minn kumpanija ohra diversa minn dik imsemmija fit-titolu tal-artikolu taghhom u cioe' Nexia BT, dan partikolarment ghaliex huma l-istess intimati appellati li jikkonfermaw bil-gurament li huma ma ghamlux din il-verifika. Apparti dan jirrizulta mic-cekkijiet esebiti a fol. 32 et seq tal-process (li din il-Qorti tqis li l-intimati bilfors setghu raw biss wiehed minn dawn ic-cekkijiet kif jirrizulta mix-xhieda ta' Manuel Castagna stante li tressqet il-prova li f'dak ix-xahar ma hargux cekkijiet ohra) li la darba huma raw ic-cekk b'ghajnejhom facilment setghu vverifikaw li fil-fatt ic-cekk kien mahrug mill-kumpanija msemmija fit-titolu tal-artikolu taghhom ghall-kuntrarju ta' dak li taw x'jifhem lill-qarrej. L-istess intimati wkoll jikkonfermaw li ma ghamlu l-ebda nvestigazzjoni dwar ma' min kien jahdem is-sors li wrihom ic-cekk. Ghaldaqstant dwar dan il-punt din il-Qorti tqis li dik il-parti tal-artikolu li taghmel referenza ghall-pagament ta' salarji minn kumpanija ohra li mihijiex Nexia BT ma tistax tigi kunsidrata bhala sostanzjalment korretta u lanqas taqa' fil-livell ta' esagerazzjoni li f'certu cirkostanzi huwa accettabbli fil-gurnalizmu, w'ghaldaqstant f'dan ir-rigward l-ewwel aggravju tal-appellanti huwa gjustifikat.

Illi l-ewwel aggravju jsostni wkoll li anki dik il-parti tal-artikolu fejn jinghad li l-impjegati ta' Nexia BT rcevew il-pagament permezz ta' cekkijiet ma jistax jinghad li hija sostanzjalment korretta stante li kienu biss zewg impjegati li thallsu b'dan il-mod ghar-raguni li kien gie terminat l-impjieg taghhom. Il-Qorti rat li l-artikolu in kwistjoni juza l-kelma **'L-impjegati ta' Nexia BT'** fit-titolu tieghu bl-ghan car li jaghti x'jifhem lill-qarrej li l-impjegati kollha tal-kumpanija rcevew cekk u mhux uhud. Rat ukoll illi dan il-kliem rega' ntuza fl-ewwel paragrafu tal-artikolu kif ukoll aktar 'il isfel terga' tintuza l-kelma 'il-haddiema' minghajr ebda ndikazzjoni ta' numru bl-intendiment car li l-qarrej jifhem li l-impjegati kollha rcevew cekk bhala hlas u mhux uhud. Din il-Qorti tqis ukoll li stante li l-appellati stess ikkonfermaw li s-sors kienet persuna wahda u li din semmitilhom xi kollegi u mhux l-impjegati kollha, jirrizulta allura li wkoll din il-parti tal-artikolu tmur ben oltre l-livell ta' esagerazzjoni accettabbli fl-ezercizzju tal-liberta' tal-espressjoni u ghalhekk ma tistax titiqies li hija fis-sustanza korretta. Din il-Qorti tifhem li kieku l-appellanti wzaw il-kliem bhala 'uhud mill-impjegati' jew 'numru ta' mpjegati' fl-artikolu taghhom izda xejn ma jiggustifika, lanqas il-liberta' tal-espressjoni, l-intendiment car b'malizzja fl-artikolu koncernat li l-haddiema kollha rcevew il-hlas permezz ta' cekk. Minn dan l-aspett ukoll l-ewwel aggravju tal-appellanti jisthoqq li jigi milqugh.

Illi l-ewwel aggravju jaghmel ukoll referenza ghal dik il-parti tal-artikolu fejn jinghad li x-xoghol tal-kumpanija Nexia BT '**mar il-bahar'** u li l-allegat fatt li l-impjegati thallsu permezz ta' cekk kien

sinjal ahmar qawwi hafna dwar **'futur tassew incert'** ghall-kumpanija. Il-Qorti regghet rat ghal diversi drabi il-provi u x-xhieda partikolarment tal-appellati fl-atti u jirrizultalha li l-appellati waslu ghal dawn il-konkluzjonijiet unikament fuq bazi ta' dak li kien qalilhom is-sors li, allegatament, ghall-kuntrarju ta' dak li kien jigri s-soltu, lis-sors u xi kollegi ohra kien inhargilhom cekk kontenti l-paga flok sar 'direct credit'. Din il-Qorti bl-ebda tigbid tal-immaginazzjoni ma tista' tifhem kif l-appellati setghu unikament minn din l-informazzjoni jikkonkludu li l-kumpanija in kwistjoni kien naqsilha x-xoghol tant li 'mar il-bahar' u li kellha 'futur tassew incert'. Ghalkemm huwa minnu li din il-Qorti trid toqghod attenta li zzomm il-bilanc bejn id-dritt ta' liberta' ta' l-espressjoni u d-dritt tal-protezzjoni tar-reputazzjoni tal-persuni jew entitajiet involuti, kif ukoll filwaqt li tifhem li certu grad ta' opinjoni u esagerazzjoni hija accettabbli fis-salvgwardja tad-dritt ta' liberta' ta' l-espressjoni, fil-kaz partikolari tqis li l-appellati kellhom l-obbligu li jaghmlu aktar verifiki u mhux biss jibnu storja tant mwieghra tal-andament tal-kumpanija in kwistjoni semplicement minn cekk wiehed li raw u kliem li qalilhom sors wiehed. Minn dan il-lat din il-Qorti tqis ukoll li l-ewwel aggravju tal-appellanti huwa gjustifikat u ser tghaddi sabiex tilqa' l-istess.

7. Illi t-tieni aggravju tal-appellanti jsostni kif isegwi:

' . . . li l-Ewwel Onorabbli Qorti hadet in konsiderazzjoni punt li ma jirrizulta mkien mill-process jew mill-provi esebit u dan bil-

kunsiderazzjoni taghha maghmula f'pagna sitta (6) tas-sentenza, fejn ikkunsidrat lir-rikorrenti apellanti bhala persuna politika. Nonostante l-fatt li dan ma jirrizulta minn imkien mill-provi u ghaldaqstant quod non est in actis non est in mundo, huwa evidenti li ebda mill-persuni naturali li jiffurmaw parti minn din il-kawza ma jiffurmaw parti mix-xenarju politiku lokali jew internazzjonali.'

L-aggravju jkompli jelabora li ghall-persuna privata l-livell ta' kritika accettabbli huwa ferm aktar baxx minn dak li ghandu jkun soggett ghalih persuna fil-kamp politiku filwaqt li jaghmlu referenza ghall-gurisprudenza kemm lokali kif ukoll tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem dwar dan il-punt.

L-appellati dwar dan l-aggravju jirrispondu li preliminarjament il-kwistjoni jekk l-appellanti ghandhomx jitqiesu bhala persuni pubblici hija rrilevanti ghall-kaz odjern u jsostnu li la dan il-punt ma tqajjimx quddiem l-Ewwel Onorabbli Qorti ma ghandux jitqajjem issa. In oltre, isostnu li fi kwalunkwe kaz is-socjeta' appellanti Nexia BT ghandha titqies bhala entita' pubblikament esposta u dan skont l-appellanti minhabba l-assocjazzjoni taghha mad-direttur taghha Brian Tonna li jsostnu li huwa persuna politikament u pubblikament espost. Isostnu li l-principju li l-krititka ta' figuri pubblici ghandha anqas impatt minn kritika fuq persuni ohra ma japplikax biss ghall-ufficcjali pubblici u persuni fl-awtorita' izda jestendi wkoll lejn l-agir ta' persuni li b'xi mod ikunu responsabbli fil-konfront tal-pubbliku filwaqt li l-appellati jaghtu ezempju ta' professjonisti li jaghtu s-servizzi taghhom lill-Gvern.

Il-Qorti kkunsidrat li l-paragrafu fid-decizjoni appellata li minnu qed jilmentaw l-appellanti jaqra kif isegwi:

'Finalment, in vista tal-fatt illi r-rikorrent huwa persuna politika, dwar il-livel ta' kritika li politiku tista' ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza Ligens vs Austria, u abbracjata mill-Qorti Maltin, intqal illi:-

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'.

Illi din il-Qorti stess hija w'taqra d-decizjoni tal-Ewwel Onorabbli Qorti meta waslet ghall-paragrafu in kwistjoni baqghet perplessa

kif l-Ewwel Qorti f'daqqa wahda qabdet l-argument 'illi r-rikorrent huwa persuna politika' stante li dan l-argument ma kien xejn ikompli ma' dak ta' qablu fl-istess decizjoni. Jirrizulta wkoll li fil-fatt din il-kwistjoni ma tqajjmitx waqt is-smiegh tal-provi quddiem l-Ewwel Onorabbli Qorti. In oltre l-fatt li l-Qorti taghmel referenza ghal rikorrent wiehed u mhux rikorrenti (bhal ma appuntu hemm fil-kaz odjern) xejn ma jghin lil din il-Qorti sabiex tifhem ir-raguni ghalfejn l-Ewwel Qorti kellha temfasizza dwar dan il-punt f'dak l-istadju tad-decizjoni u ghal min mir-rikorrenti kienet qed taghmel referenza l-Ewwel Qorti. Fil-fatt mid-decizjoni jirrizulta wkoll li ghajr ghal dan il-paragrafu, l-Ewwel Qorti mkien aktar ma bbazat id-decizjoni taghha fuq dan il-punt u cioe' dwar jekk 'il hekk imsejjah 'rikorrent' hux persuna politika jew le. Din il-Qorti ghalhekk tqis li nonostante r-referenza li saret mill-Ewwel Qorti dwar il-punt jekk ir-rikorrenti jew xi hadd minnhom kellhomx jitqiesu bhala persuna politika jew le, jirrizultalha li d-decizjoni tal-Ewwel Qorti ma kellhiex bhala bazi taghha din il-konkluzjoni anzi pjuttost jidher li dan il-paragrafu dahal fid-decizjoni odjerna bi zvista u ma kellu l-ebda pern fuq id-decizjoni ahharija tal-Ewwel Qorti. In oltre din il-Qorti zzid li bhalma gie ammess mill-istess appellanti fit-tielet aggravju taghhom fir-rikors tal-appell odjern, in vista tal-avvenimenti precedenti tal-'Panama Papers' certament uhud mir-rikorrenti jikwalifikaw sa certu puntu bhala persuni pubblikament esposti. Ghalhekk ghal dawn ir-ragunijiet l-Qorti ser tghaddi sabiex tichad it-tieni aggravju tal-appellanti.

8. Illi t-tielet aggravju jinkorpora wkoll uhud mill-argumenti li gia tqajjmu fl-ewwel aggravju liema aggravju fis-sustanza tieghu jaqra kif isegwi:

'. . . . li l-Ewwel Onorabbli Qorti kienet skoretta fil-konkluzjoni taghha li l-intimati appellati kellhom kull dritt li jikkumentaw fuq is-socjeta' esponenti f'gieh l-interess pubbliku. L-esponenti jissottomettu li f'kaz fejn il-persuna m'hijiex wahda pubblika jew politika, tajjeb li ssir distinzjoni bejn dak li huwa materja ta' interess pubbliku u dak li m'huwiex. Filwaqt li l-ligi u l-Qrati ta' Malta offrew protezzjoni lill-persuni politici anke fuq materji li huma privat, wiehed ghandu l-aspettativa legittima li fir-rigward ta' persuna privata, jew addirittura socjeta', dan il-livell ta' protezzjoni ghandu jkun hafna akbar. Ghaldaqstant qed jigi sottomess li filwaqt li jista' jezisti nteress pubbliku, bhal ma gie imsemmi mill-Ewwel Onorabbli Qorti fis-sentenza taghha, b'referenza ghall-imsemmija 'Panama Papers', dan l-istess kejl m'ghandux jigi applikat ghar-rigward ta' materja li fuqha ma jezisti ebda interess pubbliku, bhal ma hi l-istorja ossia allegazzjoni li hemm xi problem interni fl-operat professjonali tas-socjeta'. Il-fatt li fil-passat socjeta' giet imsemmija f'suggett ta' interess pubbliku ma jaghmilx dak kollu li jikkoncerna dik is-socjeta' ta' interess pubbliku daqs li kieku saret persuna pubblika jew politika.'

L-aggravju jkompli billi jistaqsi l-pubbliku x'interess jista' jkollu fl-operat ta' socjeta' privata, fil-mod kif jigu mhallsa l-impjegati tal-istess socjeta' privata la darba dan il-hlas ma jsirx minn fondi pubblici jew f'individwi li la huma ufficjali pubblici u lanqas

jiffurmaw parti mill-kamp politiku ghajr li jkollhom klijenti fil-kamp politiku.

Partikolarment l-aggravju jilmentaw dwar il-kummenti segwenti li saru fl-artikolu in kwistjoni:

(i) 'fl-ahhar xhur l-andament mar il-bahar';
(ii) 'ohrajn issa qed ihabbtu wicchom ma' futur incert ghall-ahhar u ma jafux x'ser jsir minnhom fiz-zmien li gej';
(iii) 'il-haddiema kienu xxukkjati meta rcevew is-salarju taghhom';
(iv) 'dan kien sinjal ahmar qawwi hafna dwar futur tassew incert',

u jinsistu li ma jikkwalifikawx bhala 'fair comment' jew 'value judgement'. L-appellanti jkomplu l-aggravju taghhom billi jsostnuh permezz ta' referenza ghall-gurisprudenza tal-Qorti Ewropea ghad-drittijiet tal-bniedem.

Illi l-intimati jilqghu ghal dan l-aggravju billi jsostnu li stante li uhud mir-rikorrenti huma persuni esposti pubblikament allura l-agir tal-istess rikorrenti (cioe' l-grupp ta' kumpaniji) huwa certament fl-interess pubbliku. Bhala bazi tal-argument taghhom l-intimati jikkwotaw diversa gurisprudenza tal-Qrati Inglizi.

Illi din il-Qorti, fl-ewwel aggravju trattat precedentement gia tat il-konsiderazzjonijiet taghha dwar uhud mill-kummenti hawn fuq kwotati u qieset li bhala kummenti kienu jmorru ben oltre s-

sustanza tal-istorja li kienet inghatat mis-sors lill-intimati u li jirrizulta evidenti mill-artikolu li dawn il-kummenti tnizzlu malizzjozament sabiex il-qarrej jinghata x'jifhem fatti li essenzjalment bl-ebda mod ma kienu gew verifikati mill-intimati w'ghaldaqstant jikkostitwixxu malafama fil-konfront tar-rikorrenti appellanti.

Illi izda f'dan it-tielet aggravju l-appellanti jargumentaw li dawn il-kummenti lanqas kienu gjustifikati ai fini ta' nteress pubbliku stante li principalment jikkoncernaw operat ta' kumpanija privata.

Illi din il-Qorti ma taqbilx ma' dan l-argument **limitament** ghal dik il-parti fejn l-artikolu wassal lill-qarrej il-fatti verifikati u cioe' li haddiema rcevew il-hlas taghhom permezz ta' cekk u dan ghaliex l-intimati kienu vverifikaw dan b'ghajnejhom filwaqt li kellhom l-informazzjoni mis-sors li normalment il-hlas tas-salarji kien isir permezz ta 'direct credit'. Fl-isfond ta' kumpanija msemmija fil-'Panama Papers', sa dak il-punt, il-Qorti tqis li dak riportat kien fil-fatt fl-interess pubbliku stante l-espozizzjoni pubblika tal-Kumpanija f'dawk ic-cirkostanzi. Oltre din l-informazzjoni izda jirrizulta lill-Qorti li dawk il-partijiet tal-artikolu fejn issemma' li l-haddiema kollha rcevew cekkijiet meta kienu biss tnejn, li x-xoghol tal-kumpanija kien sejjer il-bahar u li xeghlu l-bozoz homor ghall-impjegati, kienu kollha kummenti li jmorru ferm oltre l-kumment gust u l-livell ta' esagerazzjoni accettabbli minn gurnalist fl-ezercizzju tal-liberta' tal-espressjoni u dan meta komparati mal-livell ta' fatti pruvati li l-intimati kellhom f'idejhom qabel nkiteb l-

artikolu kif ukoll il-fatti li tressqu quddiem il-Qorti. Dan kollu jikwalifika dawn il-kummenti f'kongetturi malizzjuzi ntizi sabiex izidu nteress fl-artikolu li ghalih kienu responsabbli l-intimati minghajr izda ebda bazi fattwali lanqas remota, w'ghaldaqstant din il-Qorti zgur ma tistax tqis li tali nformazzjoni tista' tikwalifika bhala fl-interess pubbliku. Il-Qorti tistaqsi x'interess jista' jkollu l-pubbliku li jinghata nformazzjoni skorretta u mhux veritjera?! Anzi tqis li l-interess pubbliku jirrikjedi li qabel ma tinghata nformazzjoni lill-qarrej din tigi verifikata u mhux il-qarrej jinghata x'jifhem li jezistu fatti li effettivament ikunu biss kongetturi ta' min qed jikteb l-artikolu filwaqt li l-persuni nvoluti jigu mcappsa b'malfama mhux misthoqqa. Malfama li fil-kamp ta' servizzi professjonali li huma stabbiliti fih ir-rikorrenti certament titqies bhala li tista' taghmel hsara kbira lin-negozju u l-interessi tal-istess rikorrenti kemm f'dik li hija fiducja tal-haddiem kif ukoll da parti ta' klijenti prezenti u klijenti prospettivi. Huwa f'dan l-isfond ta' nuqqas ta' verifika assoluta da parti tal-intimati li l-Qorti ma ssib l-ebda bazi legali sabiex tikwalifika l-kummenti suesposti kontenuti fir-rikors bhala 'kumment gust' jew li saru fl-'interess pubbliku' anzi tqis li jikwalifikaw bhala kummenti libelluzi u malafamanti fil-konfront tar-rikorrenti w'ghaldaqstant il-Qorti tqis li t-tielet aggravju tal-appellanti jisthoqq ukoll li jigi milqugh.

9. Konsiderazzjonijiet dwar danni:

Illi r-rikors odjern jitlob illi l-Qorti tillikwida s-somma dovuta lir-rikorrenti ai termini tal-artiklu 29 tal-Att dwar l-Istampa (Kap. 248 tal-Ligijiet ta' Malta).

Illi l-artikolu 29 jaqra kif isegwi:

'Kull min, b'xi mezz imsemmi fl-artikolu 3, jippubblika xi dikjarazzjoni li jkun jaf li hi jew bid-diligenza xierqa seta' jkun jaf li hi falza u li x'aktarx taghmel hsara lil xi negozju jew proprjeta' ohra, jehel li jhallas, minbarra d-danni li jkollhom jithallsu taht xi ligi ohra li tkun issehh dwar kull telf jew hsara attwali, somma ta' mhux izjed minn hdax-il elf, sitt mija u sitta u erbghin euro u sebgha u tmenin centezmu (€11,646.87) li tigi sabbilita mill-qorti kompetenti.'

Illi din il-Qorti tqis li l-intimati kienu ben konxji meta ppubblikaw l-artikolu li bosta mill-informazzjoni li giet esposta bhala 'fatti' fl-istess artikolu kienet biss frott kongetturi tal-awtur stante li l-unika prova li huma kienu raw u vverifikaw kien biss cekk wiehed li fuq kollox lanqas biss indunaw li kien mahrug mill-istess kumpanija li fit-titolu tal-artikolu huma emfasizzaw li ma kinitx hallset lill-impjegati taghha direttament. Il-Qorti tqis li l-intimati ma setghux ma jqisux u ma jipprevedux l-konsegwenzi hziena ta' tali kummenti mhux verifikati, libelluzi u malafamanti fuq l-attivita' tar-rikorrenti mill-kummenti kemm ghal dak li huwa effett li dawn setghu jhallu fuq l-impjegati stess tal-kumpanija (li jibdew jibzghu dwar l-istabilita' ta' xoghlhom) kif ukoll fuq klijenti kemm prezenti kif ukoll prospettivi (li wara li jaraw tali artikolu zgur li jahsbuha

darbtejn jibqghux jew jibdewx juzaw is-servizzi tar-rikorrenti).

Illi fic-cirkustanzi suesposti l-Qorti tqis li s-somma likwidata ghandha tirrifletti:

(i) l-gravita' tal-kummenti da parti tal-intimati; u

(ii) l-fatt li l-intimati facilment setghu jipprevedu li l-informazzjoni falza kontenuta fl-artikolu setghet tikkawza hsara lin-negozju tar-rikorrenti.

(iii) tenut izda wkoll kont bhala bilanc li parti mill-artikolu kien bazat fuq fatti verifikati u l-isfond li r-rikorrenti kienu gia esposti pubblikament in vista tal-avvenimenti tal-'Panama Papers'.

Ghaldaqstant ser tghaddi sabiex tillikwida s-somma dovuta bhala danni mill-intimati in solidum lir-rikorrenti bejniethom fis-somma ta' sitt elef Euro (€6,000).

Decizjoni

Ghaldaqstant ghar-ragunijiet kollha suesposti, din il-Qorti tghaddi sabiex taqta' w'tiddeciedi dan l-appell billi filwaqt li tichad it-tieni aggravju tal-appellanti, tghaddi sabiex tilqa' l-ewwel u t-tielet aggravju, konsegwentement tghaddi sabiex thassar, tirrevoka u tannulla s-sentenza appellata moghtija mill-Onorabbli Qorti tal-Magistrati (Malta) datata 14 ta' Marzu, 2019 fl-ismijiet premessi u filwaqt li tichad l-eccezzjonijiet tal-intimati appellati tghaddi sabiex

tilqa' t-talbiet tar-rikorrenti appellanti u tikkundanna lill-intimati *in solidum* bejniethom ihallsu lir-rikorrenti kollha bhala danni s-somma ta' sitt elef Euro (€6,000) bejniethom.

Bl-ispejjez taz-zewg istanzi ghandhom jigu sopportati kollha mill-appellati.

(ft.) Dr. Joanne Vella Cuschieri
Imhallef

(ft.) Maureen Xuereb
Deputat Registratur

Vera kopja

D/Registratur