



**QORTI TAL-APPELL
(SEDE INFERJURI)**

**S.T.O. PRIM IMHALLEF
MARK CHETCUTI**

Illum l-Erbgha 17 ta' Gunju, 2020

Numru 1

Rikors Nru. 387/2015

Malta Gay Rights Movement

vs

Ivan Grech Mintoff

Il-Qorti,

Rat ir-rikors tal-appell ta' Ivan Grech Mintoff mis-sentenza tal-Qorti tal-Magistrati tat-28 ta' Frar 2019 fejn sabet li d-dikjarazzjonijiet tal-konvenut libelluzi u malafamanti fil-konfront tar-rikorrenti u ikkundannatu jhallas lil Moviment is-somma ta' €3,000 in linea ta' danni;

Rat ir-risposta tal-appellati li issottomettew li l-appell ghandu jigi michud billi s-sentenza tal-Qorti tal-Magistrati hi gusta u timmerita konferma;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat is-sentenza tal-Qorti tal-Magistrati li tghid hekk:
Konstatazzjonijiet fattwali

Jirrizulta illi, fit-18 ta' Ottubru 2015, giet ippubblikata ittra fuq The Malta Independent on Sunday intitolata 'Lies and assumptions about MGRM and Planned Parenthood', illi fih intqal is-segwenti: (fol 132)

In July this year, MGRM donated a number of books to the Ministry for Education as part of its mission to ensure that Maltese schools are equipped with resources that portray LGBTIQ realities and challenge gender stereotypes. This is part of an effort to foster school environments that are safe, welcoming and inclusive of all students irrespective of their sexual orientation, family of origin, gender identity, gender expression or sex characteristics. Our aims are perfectly aligned with the Ministry for Education's Respect for All Framework, and as social workers, educators, counsellors and parents in our own right, we are also well qualified in assessing the quality of the resources provided and their potential to foster positive attitudes in children.

It is not MGRM's role to defend the MEDE's policy and curriculum with regard to sexuality and relationships education although it is our understanding that considerable effort is made by schools and the Department of PSCD to ensure that parents are in fact involved in sexuality and relationships education initiatives, as is made clear in official policy documents.

What concerns us is the fact that The Malta Independent on Sunday chose to publish Ivan Grech Mintoff's ludicrous assertions without seeking to verify any of the allegations made.

MGRM always refuses to participate in TV programmes which it knows beforehand will not present a truthful and unbiased version of events and do not allow for a level playing field.

A great deal is being made of the fact that in 2009 MGRM benefited from funding from IPPF for the development of the Proposed Gender Identity Act for Malta. This was presented as a revelation despite acknowledgement of the funding never being in question, as evidenced by references in the publication itself.

IPPF is one of the foremost NGOs active in the field of sexual and reproductive health and rights. The organisation is considered an expert in this field, helping to save hundreds and thousands of lives each year. IPPF covers a wide range of public health concerns including safer sex, access to contraception, HIV/AIDS services, STI prevention, sexual violence and rape and child marriage to name a few. Also included is access to safe abortions. The IPPF is a worldwide organisation with regional offices and associate member organisations who, through staff and volunteers, provides advocacy measures and services mostly in developing countries supporting and assisting the most vulnerable communities around the world.

One of IPPF's associate members is the American Planned Parenthood. Planned Parenthood provides sexual and reproductive health services across the US. They are a recognised healthcare provider in many states and one of the few where access to healthcare is not dependent on whether the patient has medical insurance. Contrary to popular belief, only three per cent of the services provided by Planned Parenthood relate to abortion.

In July, an eight-minute video was circulated on YouTube by the right wing activist group Centre for Medical Progress featuring Dr Deborah Nucatola, one of Planned Parenthood's regional directors. The group accused Planned Parenthood of selling foetal tissue for profit. It later emerged that the video, involving two actors commissioned by Centre for Medical Progress, was highly

edited. From the threehour transcript of the entire interview and full-length video, it was found that the claims being made by the right-wing group were false and Planned Parenthood has, to this date, not been found guilty of any wrongdoing despite being subjected to intense scrutiny by the US Congress.

For those who would argue that MGRM should not accept funding from an entity that provides abortion services, it would be useful to keep in mind that such a policy would exclude the take-up of any EU funding since most EU countries provide access to abortion as part of their public health services, a position which no political party, civil society organisation or NGO has so far espoused.

It is hugely disappointing that the newspaper should simply reproduce what is a blatant attempt to discredit MGRM based solely on lies and assumptions without any attempt to verify the veracity of the claims being made by Mr Grech Mintoff and his ilk - something even a quick search on the internet would have easily revealed.

Jirrizulta illi l-ghada illi deher dana l-artikolu, fid-19 ta' Ottubru 2015, l-intimat Ivan Grech Mintoff tella 'post' fuq il-pagna tieghu ta' Facebook fejn qal is-segwenti:

Gabbi Calleja's (hiding behind MGRM) reply is beyond contempt and comprehension.

In brief she:

1) ADMITS to taking money from MURDERED CHILDREN to fund her own personal agenda.

2) She justifies it by saying that IPPF perform 'safe' abortions. Safe for whom exactly? "Oh sorry son you don't get a life because IPPF gave you a save abortion. Here you go Gabi your hands are clean". Is that how it all pans out in you head Gabi? And you want us to believe that your thinking is correct?

3) Moreover, she claims the videos are fake, how shocking of us to use them. Wrong again.

<http://dailysignal.com/2015/09...>

<http://www.wnd.com/2015/09/no-...>

(just google "planned parenthood videos real and you will see that gabi is quite "liberal" with the truth.:

4) Finally To say that they have not been found guilty, "so its ok" is also verging on total incredibility. Firstly with the same argument, they have not been found innocent either. Secondly you are not dragged in to testify at a Congressional hearing for the House Committee for spitting on the pavement. You don't have tens of millions of euros SUSPENDED by the EU for nothing but because "

Planned Parenthood selling aborted baby parts"

"Europe is horrified by the scandalous harvesting and selling of human body parts allegedly for profit by Planned Parenthood in the USA," said Miroslav Mikolasik of Slovakia, chairman of a parliamentary working group."

And yet ... Gabi JUSTIFIES it all instead of at the very least apologising for such action. What will be her position when they ARE found guilty. Will she then admit fault and withdraw her harmful indoctrination.

It SERIOUSLY worries me when someone so callous and reasons like this expects us to totally hand over our children's education in order to fill their heads with harmful gender indoctrination. Who is more at fault her? Gabi or the government who is pushing her agenda?

Alleanza Bidla's stand that your agenda harms our children and how you funded it all is simply disgusting stands. Now more than ever!

Jirrizulta illi, precedentement, fuq programm televisiv li fih deher l-intimat fid-9 ta' Ottubru 2015, r-rikorrenti tikkontendi illi l-intimat allega illi "b'riferenza għall għaqda rikorrenti: ' ... jiehdu flus minghand nies li joqtlu tfal' – ir-rikorrenti ippresentat recording ta' dana ilprogramm izda qatt ma ppresentat traskrizzjoni tal-programm u wisq anqas indikazzjoni ta' fejn qal tali kliem u xi kliem qal.

Jirrizulta illi, sussegwentement fl-24 ta' Ottubru 2015, l-intimat, fuq is-sit tal-Facebook tiegħu, tella artikolu illi deher fuq is-sit elettroniku LIVEACTIONNEWS.ORG intitolat 'BREAKING: U.S. House passes bill to defund Planned Parenthood' u għamel is-segventi kumment: "We are being proven right all along re MGRM & International Planned Parenthood and its associates! Gabi & MGRM feel very very ASHAMED!"

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

omissis

Eccezzjoni fil-meritu – "fair comment"

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.

Dwar 'fair comment', Gately on Libel and Slander jghid:

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

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

... dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħli juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajir 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.

Tali tagħlim huwa anke rifless f'ġurisprudenza estera u, di fatti, fil-kawza Spiller vs Joseph deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, Lord

Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.

Finalment, 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'hijjex dejjem facli li tistabilixxi. 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'.

Dwar id-difiza ta' "value judgments", imqajjma wkoll mill-intimat, ssir referenza ghaddecizjoni fil-kawza *Erla Hlynsdottir vs Iceland* deciza mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-21 ta' Ottubru 2014, fejn intqal is-segwent: A fundamental distinction should be made between statements that are to be categorized as factual assertions and value judgments. In its contextual examination of the disputed statement as a whole, the Court must carry out its own evaluation of the impugned statement. Furthermore, the Court has acknowledged that the distinction between value-judgments and statements of fact may be blurred, and that the issue may need to be resolved by examining the degree of factual proof.

Dana l-argument huwa rifless anke fid-decizjoni illi l-istess Qorti kienet tat fil-kawza *Sizma vs Hungary* deciza f'Ottubru 2012 fejn intqal is-segwent: "The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10. The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be."

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Konstatazzjonijiet ta' fatti

Jirrizulta, mill-provi prodotti, illi l-muviment rikorrenti Malta Gay Rights Movement, fit-18 ta' Ottubru 2015, kienet kitbet ittra fuq il-gurnal lokali ta' kull nhar ta' Hadd, *The Malta Independent on Sunday*, fejn, filwaqt illi ghamlet referenza ghal kummenti illi l-intimat kien precedentement ghamel fuq l-istess gazzetta – illi kopja taghhom qatt ma inghaddew lill dina l-Qorti – ghaddiet biex tispjega l-posizzjoni ta' l-istess ghaqda ghal dak illi jirrigwarda finanzjament illi l-istess ghaqda kienet irceviet minghand l-International Planned Parenthood Federation ghall progett tal-izvilupp ta' 'Proposed Gender Identity Act for Malta', liema finanzjament l-intimat kien qieghed jikkontesta u kien qieghed jallega illi inghata minn assocjazzjoni illi taghmel il-qliegħ taghha mis-servizz tal-abort, liema allegazzjonijiet l-istess intimat kien gia ghamel precedentement fuq it-television fil-konfront ta' l-istess ghaqda.

Jirrizulta illi, wara tali ittra, l-intimat ghazel illi jirrispondi għall tali ittra billi jagħmel 'post' fuq il-pagna tiegħu fuq is-sit soċjali 'Facebook', fejn, fost affarjiet oħra jgħid "Gabbi Calleja's (hiding behind MGRM) reply is beyond contempt and comprehension. In brief she: 1) ADMITS to taking money from MURDERED CHILDREN to fund her own personal agenda"

Jirrizulta illi l-kwistjoni kollha tirrigwarda fondi illi allegatament il-muviment rikorrenti kien ircieva mingħand l-ghada International Planned Parenthood Federation, sabiex jirredigu ligi għall-Malta dwar l-Identita' tal-Generu, liema fondi, l-intimat jikkontendi kienu fondi illi gew ottenuti mill-promozzjoni u servizz ta' abort.

Jirrizulta illi, skond is-sit ufficjali tal-International Planned Parenthood Federation, tal-Federazzjoni għandha s-segwenti għanjet:

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.

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

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

Jirrizulta illi fost il-141 membru ta' tali Federazzjoni, hemm l-Assocjazzjoni Amerikana imsejja 'The Planned Parenthood Federation of America' (PPFA) li, fost is-servizzi illi hija tagħti, kien inkluz ukoll "330,000 abortion-related services" fis-sena 2011 – (fol 127).

Jirrizulta illi fis-sena 2017, is-Senat Amerikan għadda legislazzjoni, imsejja Better Care Reconciliation Act, fejn, fost affarjiet oħra, l-Assocjazzjoni Amerikana Planned Parenthood Federation of America' giet mnehhija d-dritt illi tibqa tingħata fondi mill-Gvern Amerikan stante illi kien qed jigi allegat illi tali

fondi kienu qed jintuzaw għall servizzi ta' abort, liema għajnuna finanzjarja kienet proibita mill-legislazzjoni Amerikana.

Jirrizulta illi l-intimat Ivan Grech Mintoff, abbazi ta' tali rappurtagg u decizjoni tas-Senat Amerikan fil-konfront ta' 'The Planned Parenthood Federation of America' (PPFA) nieda kampanja fil-konfront tal-għaqda rikorrenti Malta Gay Rights Movement, fejn allega illi flejjes illi huma ottjenew biex jirredigu legislazzjoni li eventwalment wasslet għall-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 magħmulha mil-ghoti tas-servizz ta' l-abort u l-qtil tat-fal.

Jirrizulta, mill-provi prodotti, illi l-għaqda 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' għaxart elef Dollaru Amerikan (\$10,000), illi kienu ser jigu lilha mogħtija b'donazzjoni mill-'David and Lucille Packard Foundation', kienu gew mogħtija għas-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."

Jirrizulta illi f'Dicembru 2010, gie redatt rapport minn Dr Neil Falzon għall-għaqda rikorrenti, intitolat 'A Proposed Gender Identity Act for Malta', fejn saret referenza għall-Att XVIII tas-sena 2004 fejn il-Kodici Civili gie emendat biex ingħata dritt lill persuni transgender jagħmlu annotazzjonijiet fic-certifikat tat-twelid tagħhom u f'tali rapport biex propost abbozz ta' Ligi sabiex jizviluppa aktar l-principji mibdija bl-Att fuq imsemmi u jipprovdi għalldrittijiet godda.

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 firrapport redatt mill-għaqda rikorrenti gew riflessi fl-abbozz ta' Ligi finali, fejn l-għaqda rikorrenti kienet ukoll involuta fid-diskussjonijiet li wasslu għar-ratifika ta' tali ligi.

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Eccezzjoni fil-meritu – "fair comment"

Jirrizulta, mill-provi prodotti, illi l-intimat, illi ddikjara ruhhu bhala li għandu posizzjoni kontra l-abort filwaqt illi allega illi l-għaqda rikorrenti għandha posizzjoni favur l-abort, wasal għall 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 għaqda kienet, fost affarjiet ohra, stqarret illi fis-sena 2011 għamlet mal-"330,000 abortion-related services", dak kien ifisser illi meta l-għaqda rikorrenti irceviet fondi sabiex tirredigi rapport dwar l-Identita' tal-Generu mingħand l-IPPF, dawk il-fondi kienu rizultat ta' qtil ta' trabi – fi kliem l-intimat stess "taking from MURDERED CHILDREN"

Jirrizulta, madanakollu, mill-provi prodotti quddiemha, partikolarment mill-għaqda 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'.

Jirrizulta, ghalhekk, a differenza ta' dak illi allega diversi drabi l-intimat, kemm fuq ittelevizjoni nazzjonali, kif ukoll fuq il-'Facebook posts' tieghu, il-flejjes illi l-ghaqda rikorrenti inghatat sabiex tiffinanzja il-progett taghha ma kienux flejjes rizultanti mill-"qtil ta' trabi" kif minnu allegat u wisq anqas kienu flejjes illi kienu intizi ghall-promozzjoni tal-abort f'Malta, kif ried jaghti x'jifhem l-itnimat, kemm fil-kummenti tieghu kif ukoll fix-xhieda minnu moghtija varji drabi quddiem dina l-Qorti.

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 konklużjoni kontra agir ta' entita', f'dan il-kaz l-ghaqda rikorrenti, fuq cirkostanzi remoti hafna u li certament mhux sostanzjalment korretti, bhal filkaz odjern.

Dana qieghed jinghad ghax l-intimat jibbaza l-argumentazzjoni tieghu 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 millqtil ta' trabi permezz ta' l-abort.

Jirrizulta car, mill-provi prodotti, illi tali asserzzjonijiet u konklużjonijiet da' parte ta' lintimat, huma kemm skorretti kif ukoll zleali lejn il-hafna segwaci illi l-intimat ghandu, stante illi huwa naqas milli jgharraf lis-segwaci tieghu illi l-ghaqda Amerikana hija wahda mill-mija u wiehed u erbghin (141) ghaqda li jiffurma l-International Planned Parenthood Federation u naqas milli jinforma 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).

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, partikolarment persuna bhall-intimat illi huwa persuna fil-politika u li ghandu obbligi lejn ic-cittadin li, minghandu, bhal minghand kull politiku, jippretendi lealta' lejn il-verita' u l-onesta, liema lealta, din id-darba, l-intimat naqas lejha meta dawwar fatti biex jostkura lillghaqda rikorrenti.

Konsiderazzjonijiet ta' danni

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 fissentenza 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 jaghmel apologija;
- Provi dwar ir-reputazzjoni tal-attur;
- Fejn il-konvenut ikun invoka l-verita tal-fatti, jekk parti mill-fatti li jkun gew imxandra jkunu rrizultaw li huma veri; "

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

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-Imhalled Eady kellu dan xi tghid 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.

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- baži tiegħu huma diversi... Infatti... min jonqos minn obbligazzjoni jigi

obbligat jadempilha fil-forma specifika jew jigi kundannat għar-riparazzjoni taddanni bħala surrogat reintegrattiv. Imma hemm certi fattijiet li huma rriperabbli bħal meta jkun hemm id-distinzjoni, il-għaliex hu logiku u naturali li dak li jigi distrutt ma jistax jerga' jirritorna taħt l- ebda forma. (Il-bniedem maqtul, l-unur tal-persuna kalunjata jew malafamata huma eżempju ta' fattijiet irriperabbli)."

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

"L-interess biex wieħed jagixxi jista' jkun pekunarju u anke morali, purche' guridiku, jigifieri korrispondenti għall-lezzjoni ta' veru dritt; u għalhekk ittra mibgħuta lil persuna, li tilledi l- onorabilita' ta' persuna oħra, tagħti lil dan ta' laħnar 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."

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. Imhallef Joseph Said Pullicino, kienet irriteniet li kellha tinzamm sens ta' proporzjon in materja tallikwidazzjoni tad-danni. Il-Qorti, di fatti, kienet qalet illi "l- azzjoni ta' libell, biex tkun verament effikaci u gusta, ghandha tigi adoperata b'gudizzju u cirkospezzjoni, tenut kont ta' l-ingurja, il-gravita` taghha, lejn min tkun diretta u lil min tkun mahsuba tilhaq u x'danni konsegwenzjali diretti jew indiretti tista' tiggera".

Mehud dana kollu in konsiderazzjoni, il-Qorti taghmel is-segwenti osservazzjonijiet:

a. L-għaqda rikorrenti, hija certament "persuna" pubblika, stante illi fil-passat hadet posizzjonijiet dwar varji kwistjonijiet ta' interess pubbliku u certament ghandha titqies bhala entita pubbliku illi dwarha kullhadd jista jtkellem u jikkummenta u għalhekk ghandha tkun esposta għal kritika għal-agir u l-azzjonijiet taghha, 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 taghha ta' azzjoni ta' libell huwa illi jirrettifika kwalsiasi informazzjoni skorretta illi tkun inharget kontra taghha u li, fil-pubbliku, tigi skagunata u mehlusa minn kwalsiasi akkuza illi tkun saret kontra taghha infondament;

c. Ir-rikorrenti, fil-kaz odjern, di fatti, ma kkwantifikat ebda danni finanzjarji illi setghet sofriet rizultat ta' dak imxandar.

d. L-intimat Ivan Grech Mintoff, da parte tieghu, huwa politiku u mexxej ta' partit politiku u, bhala tali, ghandu kemm id-dritt kif ukoll id-dover illi jtkellem u jikkummenta fil-pubbliku dwar kwistonijiet ta' interess pubbliku, stante illi c-cittadin jistenna minghandu direzzjoni u ideal dwar kwistjonijiet varji, fosthom dik tal-abort.

e. L-intimat, madanakollu, għazel illi jaghmel asserzjonijiet fil-konfront ta' l-għaqda rikorrenti filwaqt illi naqas milli jaghti d-dettalji kollha illi huwa kien a korrent taghhom, u l-intimat kien konxjement ekonomiku fil-fatti minnu spjegati lis-segwaci tieghu u ta' stampa illi kienet ibbazata fuq fatti fuq sostanzjalment skorretti, liema fatti huwa kien ben a konoxxenza taghhom izda naqas milli jsemmi.

f. L-Qorti ma tistax ma tosservax illi tali nuqqas jew omissjoni certament turi illi lintimat ried jostura 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 r-rikorrent kienu serji, stante illi gie allegat illi hija otteniet finanzjament minn fondi generati mill-qtil ta' trabi, liema allegazzjoni huma ta' natura kriminali u serji stante illi jinvolvi akkuzi ta' qtil u certament timpingi fuq il-kredibilita' tal-ghaqda f'ghajn is-segwaci ta' l-intimat u l-qarrejja in generali.

Tenut kont ta' dawna l-fatti kollha, il-Qorti tqis illi jkun opportun li d-danni jigu kkwantifikati fl-ammont ta' tlett elef Euro (€3,000).

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 Ivan Grech Mintoff,

Tilqa t-talba tar-rikorrenti kif dedotti u

Tiddikjara illi l-allegazzjonijiet illi saru mill-intimat fid-9 ta' Ottubru 2015, fid-19 ta' Ottubru 2015 u fl-24 ta' Ottubru 2015 kif ahjar deskritti fir-rikors promotur kienu libelluzi u malafamanti filkonfront tar-rikorrenti u ghalhekk,

Tikkundanna lill-intimat Ivan Grech Mintoff ihallas lill-ghaqda rikorrenti Malta Gay Rights Movement is-somma ta' tlett elef Euro (€3,000) in linea ta' danni sofferti minnha.

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

Ikkunsidrat

L-aggravji tal-appellant huwa s-segwent:

1. L-ewwel Qorti ghamlet apprezzament zbaljat tal-fatti. Fil-qosor dawn il-fatti kienu li l-appellata ircieviet finanzjament minghand organizazzjoni li tippromuovi l-abort irrispettivament mill-iskop li ghalih ghadda l-finanzjament lil appellat. In oltre ghalkemm wahda mill-appellati cioe Gabi Calleja xehdet li rceview finanzjament minghand David and Lucille Packard Foundation, l-artikolu tal-moviment fil-gazzetta Independent tat-18 ta' Ottubru 2015 intqal li l-finanzjament gie ricevut minn Planned Parenthood, assocjata mal-International Planned Parenthood Federation li hi maghrufa ghal pozizzjoni taghha favur l-abort;
2. Il-Qorti tal-Magistrati qatt ma kellha tikkundanna lil konvenut is-somma ta' €3,000.

L-ewwel aggravju

Dak li l-appellant qed jistieden lil Qorti taghmel hu li terga' taghmel apprezzament mill-gdid tal-fatti migjuba quddiem l-ewwel Qorti. Hu pacifiku fil-gurisprudenza illi Qorti tal-Appell ma tissandakax l-apprezzament u l-interpretazzjoni tal-fatti ghal ligi idoneja tal-kaz hlief f'kazijiet eccezzjonali fejn l-ewwel Qorti tkun zbaljat il-fatti li fuqhom ibbazat is-sentenza jew il-motivazzjoni principali li waslitha ghas-sentenza. Din il-Qorti fliet l-atti tal-kawza u ma tistax tghid li hemm raguni ghaliex ghandha tqis li l-ewwel Qorti fehmet hazin il-fatti migjuba jew ma haditx kont ta' xi fatti li setghu kienu sostanzjalment rilevanti ghal vertenza u li kienu jwasslu ghal decizjoni mod iehor milli dik moghtija.

Il-Qorti ma irriskontrat ebda nuqqas fl-apprezzament tax-xiehda u provi prodotti mill-appellat. Id-dokument a fol. 69 et seq. tal-process hi l-prova matrici f'din il-kawza fejn jirrizulta ampjament car li l-finanzjament li rceviet l-appellata kienet gejjja mill-International Planned Parenthood Federation tramite donazzjoni moghtija minn David and Lucille Packard Foundation. Jintqal x'jintqal f'dokumenti ohra jew xiehda ma jbidel xejn minn dak li jirrizulta mid-dokument esebit. Dawn il-flus intuzaw ghal skop ta' zviluppar ta' position paper u draft ta' ligi tal-identita tal-generu ghal Malta. Ma hemm ebda konnessjoni u ma ngiebet ebda prova mill-appellant li dawn il-flus originaw minn wiehed mill-assocjati fost mijiet ohra tal-International Planned Parenthood Federation, cioe Planned Parenthood Federation of America li jidhru anke skont ma ikkostatat l-ewwel Qorti li hi federazzjoni favur l-abort u tghin f'tali servizzi u illi fl-2017 il-Gvern Amerikan waqaf jissusidja tali federazzjoni. Pero kif irrizulta lil ewwel Qorti, ma hemm ebda accenn jew suspett li xi fondi ta' din il-Federazzjoni intuzaw jew intbaghtu lil appellat ghall-iskop fuq imsemmi. Dan hu l-pern tal-kwistjoni kollha u l-appellant ghamel uzu hazin ta' informazzjoni skorretta bi skop li jhammeg lil appellat.

Ghalhekk dan l-aggravju hu manifestament bla bazi.

It-tieni aggravju

Dan l-aggravju jirrigwarda l-quantum tad-danni li l-appellant iqis hu eccessiv pero ma jaghtix ragunijiet validi ghaliex ghandu jitqies hekk. Invece l-ewwel Qorti qieset il-pozizzjoni tal-appellant li hu persuna fil-politika u ghalhekk ghandu l-forza tal-perswazjoni tas-segwaci jew semmiegha u

konsegwentement l-obbligu li min qed jircievi l-informazzjoni jinghata l-verita b'onesta u lealta. L-ewwel Qorti qieset li l-appellant naqas bis-shih minn dan l-obbligu u a bazi tal-gurisprudenza kwotata waslet ghal likwidazzjoni ta' danni li huma ragjonevoli meta tqis il-massimu permess mill-ligi. Din il-Qorti ma tqis li ghandha tintrometti ruhha fuq id-diskrezzjoni afdana lill-ewwel Qorti meta l-konsiderazzjonijeit li wasluha ghal tali likwidazzjoni huma validi, ragjonevoli u proporzjonati ghas-serjeta tal-kontravvenzjoni.

Ghalhekk dan l-aggravju qed jigi michud ukoll.

Decide

Ghal ghal dawn ir-ragunijiet l-Qorti taqta u tiddeciedi billi tichad l-appell ta' Ivan Grech Mintoff, u tikkonferma s-sentenza tal-Qorti tal-Magistrati tat-28 ta' Frar 2019, bl-ispejjez taz-zewg istanzi kontra l-appellant.

Mark Chetcuti

Prim Imhalled

Anne Xuereb

Deputat Registratur