



## **QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.  
GIOVANNI GRIXTI**

Seduta ta' l-24 ta' Ottubru, 2012

Avviz Numru. 337/2004

**Professor Alex Torpiano (I.D. 836254M), Dr. Dion Buhagiar (I.D. 143958M) u Dr. Marc Bonello (I.D. 743361M) f'isimhon proprju u ghan-nom u in rapprezentanza tad-ditta ta' periti TBA Periti ta' 26/1 Pjazza Sir Luigi Preziosi Floriana**

**vs**

**Jose' Herrera 51 Triq San Kristoforu Valletta**

Il-Qorti;

Rat l-avviz permezz ta' liema l-atturi talbu lil-konvenut jghid ghaliex ma ghandux ikun kkundannat prevja d-dikjarazzjoni li hu responsabbli ta' malafama u libell fil-konfront ta' l-atturi minhabba li l-Artikolu intestat 'Deep Water Quay Tender', li gie ppublikat fil-pagna hdax (11) tal-harga tal-15 ta' Gunju, 2004 tal-gazzetta 'The Times' (Dok A), huwa libelluz u malafamanti fil-konfront ta' l-istess atturi u li jtellef u jnaqqas ir-reputazzjon taghhom u

Kopja Informali ta' Sentenza

jkun kkundannat jhallas lill-atturi dik is-somma li din il-Qorti tillikwida f'ammont li ma jeccedix il-hamest elf lira (Lm5,000) u dana bhala danni u riparazzjoni ta' l-ingurja, malafama u telf u tnaqqis fir-reputazzjoni taghhom b'konsegwenza tal-publikazzjoni ta' l-Artikolu fuq imsemmi u dana a tenur ta' l-Artikolu 28 tal-Kap. 248;

Bl-ispejjez u bl-imghax legali fuq is-somma li tigi hekk likwidata sad-data ta' l-effettiv pagament kontra l-konvenut li huwa minn issa ingunt ghas-subizzjoni.

Ra wkoll in-nota ta' eccezzjonijiet tal-konveunt li permezz taghha objetta ghat-talbiet tal-atturi hekk:

Illi l-pretensjonijiet ta' l-atturi l-Professor Alex Torpiano u Dr. Dion Buhagiar huma infondati fil-fatt u fid-dritt stante illi dawn lanqas biss gew imsemmija fl-Artikolu inkwistjoni.

Illi l-eccipjent jecepixxi li ghal dak li jirrigwadja l-attur Dr. Marc Bonello jidher bic-car illi l-eccipjent kien qed jirreferi ghalih fil-kapacita' tieghu qua Chairman tal-'Malta Maritime Authority' li hija pubblika u ghalhekk l-eccipjent ghandu kull dritt li jipprattika l-liberta' tieghu ta' l-espressjoni u jikkritika l-operat ta' din il-persuna bhala Chairman ta' din l-Awtorita'.

Illi l-eccipjent jecepixxi illi l-pretensjonijiet attrici huma infondati fil-fatt u fid-dritt stante li l-kontenut ta' l-Artikolu inkwistjoni bla ebda mod jingurja, jtellef il-gieh jew ir-reputazzjoni jew b'xi mod iehor jimmalafama lill-atturi.

Illi l-eccipjent qed jecepixxi l-verita' tal-fatti hekk kif indikati fl-artikolu miktub minnu.

Illi l-eccipjent jecepixxi illi l-artikolu inkwistjoni miktub minnu huwa 'fair comment' li huwa permissibbli f'kull socjeta' demokratika li thaddan bi shih il-liberta' ta' l-espressjoni.

Salv eccezzjonijiet ulterjuri hekk permessi fil-ligi.

Semghat l-provi;

Rat l-atti kollha tal-kawza;

Ikkunsidrat:

Illi l-atturi, f'isimhom proprju kif ukoll in rapprezentanza ta' TBA periti huma tal-fehma illi s-segwenti artikolu li deher fil-gurnal fuq riferit huwa malafamanti u libelluz fil-konfront taghhom:

### **Deep Water Quay tender**

It seems that Marc Bonello (chairman of the Malta Maritime Authority) sees no conflict of interest if his firm TBA Periti by coincidence files a joint tender with CMC Ltd, one of MMA's contractors at that time and up till today. The tender was submitted to the same authority to which Dr. Bonello was vice-chairman and chairman of tendering committees. Of all the architectural firms in Malta, TBA choose CMC as its partners. Did CMC think it will have an advantage over the rest of the other tenderers if it files it[s] submissions with the vice-chairman's firm? Did TBA Periti think it will have an advantage over the rest having as one of its partners the vice-chairman of the tendering committee?

Notwithstanding, the warning by Anglu Farrugia in Parliament to Dr. Bonello regarding his conflict of interest in connection with the submission by TBA Periti and CMC Ltd for the Deep Water Quay tender (The Malta Independent, April 17, 2000) still TBA Periti and CMC saw it fit to file another submission for the same tender in 2001 when Dr. Bonello was chairman and, hence, responsible for all capital projects including the Deep Water Quay.

The advert in the newspaper followed months of preparations by the capital projects department. The minutes of the project committee show clearly that since September 1999 the CPD was working on the documentation necessary for the issue of the tender including projected estimates of works in order to adjudicate the submissions. Dr. Bonello was present at all these meetings and surely aware of all details.

It seems that now Dr. Bonello is for the first time arguing that even the second tender of 2001 was filed by

his partner only and not on behalf of TBA Periti. Was the TBA Periti letterhead also used in this case as was in the first tender and was Dr. Bonello's CV also part of the tender package?

There is a strange pattern in both tenders: first Dr. Bonello is involved in the preparation of the tender, then TBA Periti and CMC Ltd file the submission, then Dr. Bonello, after the opening of submissions, reveals to the MMA board that he has a conflict of interest in the tender and TBA Periti and CMC Ltd, having to support from their partner, decide to withdraw their tender.

How many other tenders or consultancies were TBA Periti involved in during Dr. Bonello's tenure of office as vice-chairman and chairman with the MMA? If TBA Periti applied twice for the same tender, surely there are other tenders for which TBA applied at least once.

Dr. Bonello knows very well that at least two weeks ago upon his request he asked that the sitting of the industrial tribunal be postponed. In fact, the sitting is now scheduled for July 26.

I am sure that Minister Censu Galea recalls that he has a permanent secretary at his ministry with the name Anthony Pavia. At least the director of contracts recalled under oath of having spoken to the permanent secretary informing him of the first tender and requesting him to take action and investigate. Did Mr. Pavia do anything? Or did the permanent secretary decide to remain passive, being aware of the fact that Dr. Bonello was to become chairman of the MMA in a month's time and that this would have disrupted the minister's coronation ceremony?

Finally, I would like to raise two points. One, that the meeting with the minister did not take place only because he is abroad and, secondly, I have been speaking outside Parliament.

Opportunement ukoll qed ikun riprodott ir-reklam li deher fil-gurnal The Times fil-harga tat-22 t'April 2001 li b'ittri kbar huwa intestat b'ittri kbar:

**MALTA MARITIME AUTHORITY - T E N D E R**

The Malta Maritime authority invites Civil engineering firms to register their Declaration of Interest for the provision of Consultancy Services in connection with REPAIR WORKS AT THE DEEP WATER QUAY IN THE GRAND HARBOUR. The Deep Water Quay, situated off Pinto Road, Floriana, is 488m long and is used for general cargo, Ro-Ro and bulkgrain handling. The structure of this quay, completed in the early 1960's consists of a suspended deck of pre-cast planks, supported on transverse steel beams, which are in turn supported on hollow steel pipes driven in silt. The selected Civil Engineering Firm will provide consultancy services for the study, tendering and execution phases of the major repairs and upgrading required for this quay. The declaration of Interest, company profile and other relevant documents are to be submitted during office hours in the tender box, at the Capital Projects Department, Port Directorate, Marine Pinto, Valletta, by not later than Friday 11th May 2011, at 1200 hours. The Malta Maritime authority reserves the right to reject any or all submissions.

Il-lanjanza tal-attur hija li iħossuħom malafamati fi tlett aspetti dwar l-artikolu in mertu. Fl-ewwel lok għaliex l-awtur jallega li bħala vici chairman tal-Awtorita' Marittima u per kōsegweza bħala Chairman tal-Capital Projects Committee pprova jarreka xi vantagg lis-socju tieghu l-Prof. Torpiano. It-tieni ilment jikkōcerna l-allegazzjoni li Dr. Bonello kien responsabbli mit-tkeccija ta' Dr. Carmel Chircop, li kien meqjus bħala *whistle blower*, li kien ufficjal legali tal-Awtorita' Marittima. It-tielet lanjanza tirrigwarda l-allegazzjoni li Dr. Bonello appunta lill-periti tac-Cirkewwa-Imgarr Terminal Project li kienu għamlu sottomissjonijiet mas-socji tieghu għal konsulenza tad-Deep Water Quay.

Jemergi mill-assjem tal-provi illi fl-1992, l-atturi kienu iffurmaw bejniethom ditta ta' periti teknici bl-isem TBA Periti. Fl-1999, wiehed mis-socji, jigifieri l-Perit Dr. Marc Bonello kien appuntant bħala vici chairman ta' l-Malta Maritime Authority u sena wara sar Chairman ta' l-istess. *Qua* vici chairman ta' l-Awtorita, hu kien ukoll ex-officio

chairman tal-Capital Projects Committee, li kien jieħu ħsieb l-aġġudikazzjoni ta' tenders pero' mal-hatra tieghu bhala Chairman hu ma baqax involut fl-imsemmi Kumitat.

Jirrizulta wkoll illi fl-1998, l-Awtorita' Marittima Maltija kienet harget 'expression of interest' ghal xogħol ta' disinn u tiswijiet tal-moll u kien rebah it-tender ċertu Perit Busuttil ghal liema tender kien ikkompeta l-Perit Torpiano. Il-Perit Busuttil ma kienx onora l-inkarigu lilu mogħti u f'Ottubru 1999 regghet harget l-istess "expression of interest" fil-forma ta' tender kif riprodott *supra* meta issa Dr. Bonello kien vici chairman tal-Awtorita u chairman tal-Capital Projects Committee. Dr. Bonello xehed illi f' din "expression of interest", il-Perit Torpiano, wiehed mis-socji f'TBA Periti, avvicinah u infurmah illi l-Perit Anthony Ellul mid-ditta CMC kien proponielu li jagħmlu *joint tender*. Bonello xehed li ma kienx ser jipparalizzah ghal fatt li hu socju tieghu u fl-istess waqt ma setghax jivvantagjah u li għalhekk kien irtira minn kull process ta' evalwazzjoni u sussegwentement, meta sar Chairman ta' l-Awtorita hu ma kienx involut fl-ebda tender tal-Awtorita'. Jirrizulta, madanakollu, illi din is-sejha qatt ma kienet konkluziva minhabba li f'dak l-istess perjodu, l-Gvern kien dahal fi trattativi mal-UISET dwar il-moll de quo.

Fl-2001, meta Bonello issa kien Chairman ta' l-Awtorita', kien rega hareg it-tieni "expression of interest" dwar dan l-istess moll (vide avviz riprodott MALTA MARITIME AUTHORITY – TENDER) u għal din is-sejha l-perit Alex Torpiano flimkien mad-ditta CMC regghu tefghu l-offerta tagħhom. Hawnhekk, Dr. Bonello kien talab lill-vice chairman Edgar Gatt biex jinforma l-bord li kien ser jirtira mid-diskussjonijiet dwar din it-tender u fil-fatt hekk għamel. Dan it-tender ma kie gudikat favur hadd għaliex inhass li x-xogħol kellu jingħata lil ditta li kellha esperjenza fit-tiswija tal-mollijiet. Fl-2002 l-Awtorita' kienet regghet għamlet sejha oħra u din intrebhet minn ditta barranija. Jirrizulta li sussegwentement, l-"expression of interest" intrebhet minn terzi.

Ikkunsidrat:-

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Illi Dr. Bonello jargomenta illi ma kienx bihsiebu jipparalizza lis-socju tieghu billi jinibieh milli jiffa t-tender ghaliex inzerta chairman tal-Awtorita' u dan minn fuq li qed jaghti servizz lill-pajjiz. Ugwalment itenni li dan ma kien tender xejn izda *expression of interest* li ma kienet titlob ghall-ebda hlasijiet jew prezzijiet ghal servizzi. Pero', l-istess attur jghid illi l-expression of interest kien sar sabiex min jinghazel ikun appuntat konsulent ghall-Awtorita' li jkun rikjest jaghmel id-disinji u l-*ispecifications* tat-tender li jkun mehtieg ghax-xoghol ta' kostruzzjoni. Kien koncess ukoll minn Dr. Bonello illi ghal dan ix-xoghol ta' konsulenza l-periti Maltin jithallsu skond tariffa ufficcjali.

Tajjed li jinzamm fil-mira illi *tender* jew *expression of interest* jew sejha bi kwalunkwe isem iehor, ir-rebbieh ta' dan l-ezercizzju kien ser ikun nominat konsulent tal-Awtorita' ghat-tiswisja tad-Deep Water Quay. Kontra dak li irid jaghti x'jifhem Dr. Bonello, mhux minnu li dan kien ezercizzju li ma kienx jitlob ghall-prezzijiet ghaliex certament r-rebbieh ma kienx ser jaghmel ix-xoghol ta' konsulenza b'xejn ghaliex kien ser jithallas bir-rata fissa pagabbli lil-periti f'Malta. U l-Qorti thoss li dan il-punt ghandu jkun ccarat u sottolineat qabel kull konsiderazzjoni ulterjuri. Ugwalment importanti ukoll huwa l-fatt illi kieku t-tender intrebah minn TBA Periti u CMC dawk kienu ser jaghmlu xoghol ghall-Awtorita' Marittima ta' Malta li taghha kien chairman Dr. Bonello fl-istess waqt hu socju ta' TBA Periti irrespettivament minn jekk Dr. Bonello astjenix mill-process tal-ghazla. Haga din li ma tistghax ma tinzammx bandjerata bl-ahmar tul dawn il-konsiderazzjonijiet.

Kwantu l-eccezzjoni tal-*"exceptio veritatis"* mqajjma mill-konvenut tajjed li ssir referenza ghas-sentenza tal-Qorti ta' l-Appell fil-kawza fl-ismijiet Perit Joseph Boffa vs John A. Mizzi, deciza fil-21 ta' Gunju 2005 fejn kien ritenut illi sabiex din l-eccezzjoni tirnexxi, irid jintwera li l-fatti attribwiti jkunu sostanzjalment minnhom. Issa biex din l-eccezzjoni tirnexxi b'success, il-prova jehtieg li tkun "piena, larga e sicura" fl-estensjoni kollha taghha in kwantu hadd ma jista jippretendi li jkollu licenzja ta' kritika jew kumment dwar fatti "li ma jkunux sostanzjalment veri

u korretti". (Ara ukoll "Lino Debono -vs- Saviour Balzan", Appell 27 ta' April 2001). Issa dak li qal Dr. Herrera fl-artikolu tieghu huwa sostanzjalment veru u korrett u dawn l-istess fatti huma sorretti mix-xhieda ta' Dr. Bonello stess. Huma veri fis-sens illi kien jezisti kunflitt ta' interess f'dan l-incident u Dr. Bonello kien laqgħa għalih billi astjena mill-process ta' evalwazzjoni. Għall-konvenut dan ma kienx bizzejjed u għalhekk ecepixxa li l-artikolu tieghu jikkostittwixxi a 'fair comment' li huwa permissibbli f'kull socjeta' demokratika li thaddan bi shih il-liberta' ta' l-espressjoni. F'dan ir-rigward, il-Prim' Awla tal-Qorti Ċivili, fil-kaz Emmanuel Cuschieri vs Daphne Caruana Galizia, Prim' Awla, tad-29 ta' Settembru 2011, irriteriet illi biex din id-difiza tghodd, trid tkun mibnija fuq fatti li graw u mhux fuq fatt misthajjel jew mghawweg skond il-fehma ta' min ikun qed jagħmel il-kumment ingurjuz. Biex tkun tajba, d-difiza tal-kumment għust trid tintwera li l-bazi ta' kull kritika jew kumment li ssir taħtha jinbnew fuq fatti li "ikunu vera fil-kompletezza tagħhom (ara f'dan is-sens Angelo Fenech pro et noe vs Anthony Montanaro et. Qorti ta' l-Appell 21 ta' Jannar 1993);

Issa fl-artiklu tieghu l-konvenut jippoza diversi domandi biex jistaqsi jekk dan il-process kienx wiehed trasparenti u accettabbli tenut il-kariga tal-attur bhala chairman tal-Awtorita' Marittima ta' Malta. Il-Qorti certament mhix ser tinoltra dwar jekk Dr. Bonello kienx korrett jew le bil-mizuri li ha sabiex jiddikjara l-kunflitt ta' interess li kellu jew jekk setgħex għamel aktar minn hekk għaliex dak mhux process li għandu jsir minn din il-Qorti.

Fil-kaz Onor Prim Ministru Dottor Alfred Sant Vs Gordon Pisani, (Prim' Awla, 13 ta' Ottubru 2004) kien ritenut illi "l-attur bhala persuna li tokkupa kariga pubblika hija esposta għall-kritika ta' l-operat u tal-kondotta tagħha aktar minn persuna privata, u dan minhabba l-posizzjoni ta' fiducja pubblika li tokkupaha.... ..Issa filwaqt li hu rikonoxxut li figura pubblika tista' tkun soggett ta' kritika, anke harxa, daqstant iehor hu rikonoxxut, taht il-profil sostanzjali, illi ma għandux ikun hemm excess tal-limiti ta' dak strettament necessarju għas-sodisfaciment ta' l-interess



pubbliku. In effetti, ma jidherx li qatt kienu tollerati attacchi, jew gudizzji ta' disvalur, fuq l-unur u r-reputazzjoni anke ta' persuni pubblici, speċjalment meta l-fatt rakkontat ikun bla bazi, impertinenti u 'l-boghod mill-korrettezza formali ta' l-esposizzjoni. Ara, b' ezempju, sentenzi fl-ismijiet "Joseph G. Vassallo -vs- Paolo Pace", Appell Kriminali, 17 ta' Jannar 1951 u "Onor. Seg. Parl. Joe Fenech -vs- Evarist Bartolo", Appell, 8 ta' Gunju 1999;" Fl-isfond ta' dan l-insenjament, l-Qorti tikkonkludi illi l-mistoqsijiet maghmula mill-konvenut fl-artikolu tiegħu huma "fair comment" u ma jammontawx għal malafama u libell għaliex huma mistoqsijiet legittimi li jistgħu isiru lil kull persuna li tokkupa kariga bħal din sabiex tkun accertata trasparenza. L-istess għandu japplika għas-sentiment pretiz mill-atturi l-oħra personalment u in rappresentanza tad-ditta TBA Periti la darba wiehed mis-socji tagħhom kien jokkupa l-kargia ta' chairman tal-Awtorita' interessata sabiex takkwista servizzi ta' konsulenza.

L-attur Bonello jilmenta ukoll minn zewg aspetti malafamanti ta' din il-kitba, jgħid li l-partecipazzjoni diretta tiegħu fit-tkeccija ta' Dr. Carmel Chircop bħala ufficċjal legali tal-Awtorita' Marittima kif ukoll li kien appunta lill-periti ta' Cirkewwa-Imgarr Terminal Project li kienu għamlu sottomissjonijiet mas-socji tiegħu għal konsulenza tad-Deep Water Quay. Bid-dovut rigward, meta wiehed jaqra l-artikolu għal diversi drabi ma jsib l-ebda hjiel ta' dawn l-allegazzjonijiet. Dr. Herrera jgħid biss illi Dr. Bonello jaf tajjeb illi kien talab lit-tribunal industrijali jipposponi seduta. Frankament, u b'kull rispett lejn l-awtur tal-artikolu, dan il-paragrafu ma għandu l-ebda konnessjoni ma dak ta' qablu jew dak li jikkonsegwi. Minkejja li Dr. Bonello xehed fit-tul dwar dan il-fatt, l-pubblika ma jista' jkollu l-ebda hjiel għal dak li setgħa kien qed jirreferi Dr. Herrera dwar dak li fehem Dr. Bonello la dwar it-tkeccija ta' Dr.Chircop u wisq anqas dwar il-kuntratt tal-moll ta' Cirkewwa.

Għal dawn il-motivi, filwaqt illi l-Qorti tilqa' l-eccezzjonijiet sollevati mill-konvenut, qed tichad it-talbiet tal-atturi bl-ispejjez kontra tagħhom.

Kopja Informali ta' Sentenza

**< Sentenza Finali >**

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