



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tat-23 ta' Settembru, 2013

Avviz Numru. 1/2009

**Randolph Spiteri
vs
Aleks Farrugia u Jonathan Sciberras**

Il-Qorti,

Rat l-avviz ippresentat fid 19 ta' Dicembru 2008 mir-rikorrenti fejn huwa talab lill dina l-Qorti tiddikjara illi artikolu li deher fil-gurnal 'It-Torca' fis 26 ta' Ottubru 2008 miktub mill-intimat Jonathan Sciberras intitolat "Biex tiskongra trid tkun pur" kien libelluz u malafamanti fil-konfront tieghu u ghalhekk il-Qorti kellha tikkundanna ihallas dawk id-danni li jidhrilha xierqa a tenur tal-artikolu 28 tal-Kap 248.

Rat id-difiza tal-intimat Aleks Farrugia, bhala editur tal-gazzetta It-Torca, ippresentata fil 25 ta' Jannar 2009, illi fiha, apparti eccezzjoni preliminari irrizorja, fil-meritu jilqa ghal dak lillu attribwit bili stqarr illi huwa offra spazju lill-intimat Jonathan Sciberras dwar suggett ta' interess

pubbliku u qed id-dmir tieghu minghajr ebda 'animus injuriandi' da' parte tieghu.

Rat id-difiza tal-intimat Jonathan Sciberras ippresentata fit-30 ta' Jannar 2009 fejn huwa laqa' ghal dak lilu attribiwit billi eccepixxa li f'dak li huwa qal kien hemm il-vertita' tal-fatti. Apparti minn hekk, il-kummenti tieghu kienu "fair comment" ghal dak grajja illi dak il-hin kienet ta' interess pubbliku. Finalment, huwa sahaq li l-espressjoni tieghu kienet "value judgment" li hija lilu permessa f'socjeta' demokratika.

Rat ix-xhieda tal-attur **Randolph Spiteri** moghtija fil 21 ta' Mejju 2009.

Rat ix-xhieda ta' **Aleks Farrugia** moghtija fil-5 ta' Mejju 2010.

Semghet il-kontro ezami ta' Randolph Spiteri moghtija fis 7 ta' Novembru 2011.

Semghet ix-xhieda ta' Jonathan Sciberras moghtija fis 26 ta' Marzu 2012.

Rat l-artikolu meritu tal-kawza odjerna kif ukoll il-varji artikoli ippresentati mill-intimat Jonathan Sciberras in sostenn tad-difiza tieghu.

Ikkunsidrat

Illi jidher li l-artikolu, ossija ittra meritu tal-kawza odjerna kienet sprunata minn artikolu illi kien deher fl-istess gazzetta xi gimghatejn qabel, miktub minn John C Debattista fejn issir referenza ghall-interventi li r-rikorrent kien qieghed jaghmel fi programm televiziv bl-isem ta' Xarabank meta is-suggett hemm diskuss kien l-ghejbien tal-bastiment Simshar u t-tragedja illi dina kkawzat lill-familji involuti.

Di fatti, jidher illi r-rikorrent, li huwa habib ta' Simon Bugeja, li kien involut fl-ghejbien ta' tali bastiment, kien attenda fuq il-programm Xarabank li kien qieghed jiddiksuti tali incident, u kien qieghed jiddefendi l-posizzjoni tal-habib tieghu Simon Bugeja u jressaq il-veduti tieghu fuq tali incident. Jidher illi, fost l-interventi tieghu, huwa kien qieghed jishaq illi hadd ma kellu jispekula fuq kif attwalment gara l-incident u ma joqghodux jaqilghu qaljiyet dwar l-incident.

L-artikolist John C Debatista hassu urtat minn tali agur da' arte tar-rikorrent u filwaqt illi ddeskriva l-intervent ta' Spiteri bhala wiehed li dardarlu l-istonku, ghadha biex jippunta illi r-rikorrent, li ddeskrivieh bhala qaddis b'mod ironiku, kien jikteb regolarment fil-gazzetta il-Mument u jaghmel ezattament dak li huwa kien qieghed jistieden lin-nies ma jaghmlux fil-kaz tal-habib tieghu Simon Bugeja u t-tragedja tas-Simshar.

Gimghatejn wara, imbghad, l-intimat Farrugia ippubblika ittra mibghuta mill-intimat Jonathan Sciberras fejm, filwaqt illi jaghmel referenza ghal dak li qal John C Debatista fl-artikolu tieghu, ikompli jghaddi kummenti ohra fuq ir-rikorrent. Di fatti, fl-ittra li kiteb, huwa jghid dan:

"Tajjed li wiehed jghid li dan hu Randolph Spiteri, impjegat ma' miinsteru. Din il-persuna veru kien ipokrita jilghaba tal-qaddis f'Xarabank meta bil-kitba tieghu fil-Mument kien juri hafna hdura, speċjalment fejn jidhol il-Kunsill ta' San Gwann meta kien immexxi mis-Sur Joe Borg. Kemm kien jghid xorti dwar is-sur Borg li, kif kullhadd jaf f'San Gwann, hu persuna tal-affari tieghu u serju li, izda, kemm dan Sindku ta' San Gwann, qala hafna fuq wiccu u kien mghajjar b'hafna gideb.

Randolph kien wehed minn dawn li bil-kitba tieghu wegga lis-sur Joe Borg u l-familja tieghu li kellhom jghaddu minn mumenti difficili. B'kitbietu wegga ukoll nies ohra li fil-kunsill ma kellhom l-ebda konnessjoni mal-PL imma kienu hemm biex jaqilghu lira imma ghax huma attivi fil-PL Randolph ra kif jattakahom fl-artikli tieghu.

Jiena naqbel ma' Randolph li hadd m'ghandu jxerred qlajjiet u jattakka personali, l-aktar meta l-familja tkun imwegga'. Imma hu jaf kemm wegga' nies u familji f'San Gwann meta kien jattakka lis-sindku ta' dak iz-zmien, Joe Borg, u nies ohra fil-PL f'San Gwann."

Ikkunsidrat

Illi, mill-provi prodotti jirrizulta illi l-intimat Sciberras, li dak iz-zmien kien attiv fil-Kumitat tal-Kazin Laburista ta' San Gwann bhala Segretarju, kien iddahhal mill-Kunsill Lokali ta' San Gwann bhala skrivan. Ir-rikorrent sussegwentement kien kiteb dwar tali fatt u, eventwalment, fi Frar 2008, il-kuntratt tieghu kien gie mitmum.

Jirrizulta wkoll mill-provi illi Joe Borg, illi kien sindku ta' San Gwann ghal xi zmien, kien irrizenja minn Sindku ta' l-istess lokalita' f'Mejju 2008. Ghalkemm ma ngabietx prova f'dana is-sens, ir-rikorrent stqarr illi Borg kien kiteb ittra anonima dwar il-Contracts Manager ta' l-istess Kunsill Lokali u wara illi l-Qorti kienet sabitu hati ta' tali fatt fuq ammissjoni tieghu stess, huwa kien irrizenja minn Sindku. Jirrizulta wkoll illi r-rikorrent kien kiteb dwar tali grajjiet fl-artikoli tieghu.

Tali fatti, abbinati mal-attitudini illi r-rikorrent ha fil-programm Xarabank u l-kummenti illi kien ghamel John C Debattista gimghatejn qabel kien dak illi wasslu lill-intimat Sciberras sabiex jikteb l-ittra meritu tal-kawza odjerna.

Ikkunsidrat

Id-difiza imressqa mill-intimat Farrugia fil-kaz odjern kien illi huwa ezercita diligentement id-dover tieghu bhala editur u ra illi, la darba dak li gie diskuss fuq Xarabank kien ta' interess pubbliku, kien opportun illi jippubblika l-artikolu mitkub minn Sciberras.

Id-difiza tal-intimat Sciberras, minn naha l-ohra, hija bbazata fuq tlett difizi - il-verita' tal-fatti, il-fatt li l-kumment tieghu ghandu jitqies bhala 'fair comment' u, finalment, il-fatt li l-kumemnt tieghu ghandu jittiehed fl-ottika ta' 'value judgment' accettabbli fis-socjeta' ta' l-lum.

Ikkunsidrat

Fl-ktieb **Gatley on Libel and Slander** (Sweet & Maxwell (London), 1981 jinghad hekk dwar in-natura ta' kumment:

A comment is a statement of opinion on facts. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised. "A libellous statement of fact is not a comment or criticism on any thing". But while a comment is usually a statement of opinion as to the merits or demerits of conduct, an inference of fact may also be a comment. There are, in the cases, no clear definitions of what is comment. If a statement appears to be one of opinion or conclusion, it is capable of being comment. (para. 697, pagina 294).

Fil-kawza **Brent Walker Group plc v Time Out Ltd** [1991] 2 QB 33 deciza mill-Qorti tal-Appell Ingliza, il-bazi tal 'fair comment' giet kunsidrata minn Bingham LJ li dwarha qal is-segwenti:-

“The civil law of libel is primarily concerned to provide redress for those who are the subject of false and defamatory factual publications. Thus in the simplest case A will be entitled to relief against B if B publishes a defamatory factual statement concerning A which B cannot show to be true. The law is not primarily concerned to provide redress for those who are the subject of disparaging expressions of opinion, and freedom of opinion is (subject to necessary restrictions) a basic democratic right. It is, however, plain that certain statements which might on their face appear to be expressions of opinion (as where, for example, a person is described as untrustworthy, unprincipled, lascivious or cruel) contain within themselves defamatory suggestions of a factual nature. Thus the law has developed the rule already mentioned that comment may only be defended as fair if it is comment on facts (meaning true facts) stated or sufficiently indicated. Failing that, the comment itself must be justified.”

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.

Kif kompla jghid l-istess Lord Phillips fl-ezami tieghu tal-posizzjoni mehudha mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem, huwa stqarr is-segwenti

*76. The relevant principles are helpfully summarised at paras 28 and 29 of *Sorguc v Turkey* (Application No 17089/03) (unreported) given 23 June 2009. Freedom of speech may be restricted in order to protect reputation where this is necessary in a democratic society to meet a pressing social need. Thus a test of proportionality has to be applied. In applying that test there is a significant distinction between a statement of fact and a value judgment. A statement of fact will be true or untrue and the law can properly place restrictions on making statements of fact that are untrue. A value judgment is not susceptible of proof so that a requirement to prove the truth of a value judgment is impossible to fulfil, and thus infringes article 10.*

"However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it –

Jerusalem v Austria (2003) 37 EHRR 567, para 43."

*In *Lindon. Otchakovsky-Laurens and July v France* (2007) 46 EHRR 761 the Grand Chamber went further, stating at para 55:*

"The classification of a statement as a fact or as 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 will be excessive."

77. In Nilsen and Johnsen v Norway (1999) 30 EHRR 878, para 50 the court equated the imputation of improper motives or intentions with value judgments rather than statements of fact, having regard to the fact that from the wording of the statements and their context it was apparent that they were intended to convey the applicants' own opinions.

78. The Strasbourg Court also attaches importance to the extent to which the subject of a publication is a matter of public interest. The limits of acceptable criticism are wider in relation to politicians acting in their public capacity than in relation to private individuals – Jerusalem v Austria (2001) 37 EHRR 567, para 38. In Hrico v Slovakia (2004) 41 EHRR 300, para 40g the court observed that there was little scope under article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest.

Fil-kawza Sizma vs Hungary deciza mil-Qorti Ewropeja f'Oct 2012, il-Qorti kompliet tikkunsidra il-posizzjoni taghha fejn tidhol id-difiza ta' 'value judgment', u stqarret 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 (see, for example, Lingens v. Austria, 8 July 1986, § 46, Series A no. 103; Oberschlick v. Austria (no. 1), cited above, § 63). 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 (see Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 76, ECHR 2004-XI). 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 excessive (see Jerusalem v. Austria, no. 26958/95, § 43, ECHR 2001-II)."

Ikkunsidrat

Illi, kif gia intqal, id-difiza tal-intimat Sciberras kienet fuq tlett binarji - verita tal-fatti, fair comment u value judgment. Minn naha l-oħra, ir-rikorrent qieghed jikkontendi illi kliem bhal "jilghaba tal-qaddis", illi jikteb b'"hafna hdura", kif ukoll illi l-fatt illi ra kif jattakka persuni illi fil-Kunsill Lokali ta' San Gwann "kienu hemm biex jaqilghu lira" kienu lkoll malafamantu fil-konfront tieghu.

Ghalhekk, tali tlett difizi ghandhom jigi ezaminat fl-ottika ta' dawak ilkliehem adoperati mill-intimat Sciberras u l-intenzjoni tieghu wara l-uzu ta' tali kliem da parte ta' Sciberras.

Huwa cert, l-ewwel u qabel kollox, illi d-difiza tal-verita' tal-fatti f'dawna l-kummenti ma tirrizultax ippruvata peress illi ma jirrizultax ippruvat li r-rikorrent jilghaba tal-qaddis jew inkella kiteb bi hdura, u dana peress illi kull ma qieghed jaghmel huwa li jezercita' d-dritt tieghu illi jesprimi l-opinjoni tieghu fil-pubbliku, haga illi kull persuna ghandha d-dritt illi taghmel.

Dwar id-difiza tal-"fair comment", il-Qorti ma tistax ma taghmilx referenza għall-kummenti illi kien għamel Lord Philips fid-decizjoni tal-Qorti tal-Appell Ingliza ikkonfermata mil-House of Lords fil-kawza '**Spiller vs Joseph**' fejn huwa qal illi, fir-realta ta' llum il-kliem, 'fair comment' għandhom tinbidlu għal 'honest comment'. Dana qieghed jinghad għax il-Qorti trid tara jekk il-kumment magħmul mil-intimat Sciberras fl-artikolu tieghu huwa attwalment kumment onest jew le.

Mill-fatti prodotti, jirrizulta illi Sciberras kien impjegat mal-Kunsill Lokali ta' San Gwann bħala clerk għal xi zmien u dana tneħha minn hemm wara illi, allegatament, ir-rikorrent kien kiteb dwar tali fatt. Jirrizulta wkoll illi Joe

Borg, illi Sciberras jiddefendi fl-artikolu tieghu u jattakka lir-rikorrent dwar l-azzjonijiet tieghu fil-konfront ta' Borg, kien Sindku tal-Kunsill Lokali ta' San Gwann izda, wara xi zmien irrizenja u gie rimpjazzat minn membru iehor tal-kunsill ta' l-istess Partit tieghu, ossija il-Partit Laburista.

Il-Qorti ma tistax ma tinnutax illi ma hijex haga ta' kulljum illi Sindku jirrizenja mill-kariga tieghu, aktar u aktar meta huwa kien gie elett taht il-mantell tal-Partit illi kellu l-maggioranza fil-Kunsill, jigifieri il-Partit Laburista. Illi certament, l-allegazzjoni tal-intimat Sciberras li Spiteri kellu agenda biex inehhi lill Borg minn Sindku ma jaghmel ebda sens, anke tenut kont tal-fatt illi Spiteri kellu affiljazzjonijiet mal-Partit illi kellu l-minoranza ta' membri fil-Kunsill Lokali ta' San Gwann u li certament il-kitba tieghu ma kien ser ikollu ebda effett fuq il-komposizzjoni ta' tali Kunsill.

Illi, apparti minn hekk, l-intimat ma ressaq ebda provi li setghu b'xi mod icahhdu l-fatt illi, skond kif qal ir-rikorrent, Borg kien instab hati talli kiteb ittra anonima kontra il-Contracts Manager ta' l-istess Kunsill Lokali. Illi, ghalkemm lanqas Spiteri ma ressaq tali prova, il-fatt li Borg eventwalment irrizenja minn Sindku ma kienx fatt attribwit ghall-ittri ta' Spiteri, izda kien dovut ghal xi raguni ohra, possibbilment, li instab hati min Qorti dwar dak imsemmi mir-rikorrent.

Ghalhekk, il-kumment maghmul mill-intimat Sciberras ma jistghax jitqies bhala 'fair comment', peress illi tali fatti imkien ma issemmew minu sabiex ilqarrej normali ikun jaf bil-fatti kollha.

Ghal dak li jirrigwarda "value judgment", kif stqarrew il-Qrati Ewropej, ma hemm bzonn sabiex ikun ipprovat il-fatt li dwaru qed isir il-kumment, peress illi f'tali difiza, il-htiega tal-prova tal-fatti ma hijiex mehtiega stante illi "value judgment" ifisser li qed issir, da parte tal-intimat, ezami soggettiva ta' fatti li huwa jaw dwarhom u li dwarhom hhuwa qieghed jaghmel il-kumment tieghu. Madanakollu, kif qalu l-istess qrati, irid ikun xi bazi ta' fatti korretti biex tali kumment jitqies bhala "value judgment", ghax, f'kaz illi dana ma huwiex minnu, l-kummenti imbgħad għandhu jiqties bhala wiehed eccessiv.

Mill-provi prodotti, jidher illi Sciberras naqas milli jaghmel referenza ghal zewgt fatti importanti hafna li, l-ommissjoni

tagghom, tvarja bi kbir l-evalwazzjoni tal-fatti illi dwarhom l-intimat ikkummenta. Huwa naqas illi jghid li kien impjegat tal-Kunsill Lokali ta' San Gwann bhala clerk ghal xi zmien meta is-sindku kien Joe Borg, u dana tnehha minn hemm wara li r-rikrorent kien kiteb dwar il-fatt li Sciberras kien ukoll is-Segretarju tal-Kumitat tal-Kazin tal-Partit Laburista gewwa San Gwann stess. Apparti minn hekk, huwa naqas milli jghid ir-raguni li ghalha Joe Borg irrezenja u naqas milli jsemmi li kien ammetta li kiteb ittra anonima kontra persuna impjegata fl-istess Kunsill fil-Qorti u kien instab hati taghha.

Illi n-nuqqas li jsemmi tali fatti certament jalteraw bi kbir il-fatti illi dwarhom l-intimat SCiberras kien qiegħed jikkummenta, kemm mill-aspett tal-qarrejja tal-artikolu innifsu, kif ukoll mill-aspett tal-kumment tieghu u jekk dana għandhux jitleqqi bhala 'value judgment' jew le. Biex wieħed jghid li kumment tieghu kien espressjoni u opinjoni tieghu fuq il-fatti li hemm, u għalhekk jitleqqi bhala 'value judgment', wieħed irid jassikura illi hemm fatti sufficjenti biex wieħed jikkummenta dwarhom. Huwa car li, fil-kaz in ezami, tali fatti ma jirrizultawx u għalhekk certament il-kumment tieghu ma jistax jitleqqi bhala 'value judgment'.

Ikkunsidrat

Il-Qorti trid ukoll tikkunsidra il-posizzjoni tal-intimat l-iehor, Aleks Farrugia, fil-kapacita' tieghu ta' editur tal-gazzetta lokali It-Torca.

Id-difiza imressqa minnu kienet illi huwa hass li kienet kwistjoni ta' interess pubbliku, peress illi sar referenza għal programm li ttella ftit gimgħat qabel dwar is-Simshar, u huwa ezercita d-dmirijiet tieghu korrettement meta ippubblika l-artikolu.

Il-Qorti ma tistax ma tinnutax illi kullhadd għandu d-dritt ta' l-espressjoni u jghid dak li jrid. Dana huwa dritt sagrosant li, naturalment, huwa soġġett għar-regoli tar-ragenevolezza. Apparti minn hekk, il-media, fid-diversi format tieghu, kemm stampat kemm elettroniku, huwa wieħed mill-mezzi prinċipali kien wieħed jesprimi il-veduti tieghu liberament.

Illi huwa għalhekk li l-Qorti tara li l-intimat, bhala editur, għamel sew illi jippubblika l-artikolu meritu tal-kawza odjerna, peress illi kienet l-espressjoni tal-intimat

Sciberras ghal kwistjoni li huwa kellu ma' Spiteri, liema fatt, izda, huwa ma ghamilx pubbliku u ghalhekk l-intimat Farrugia certament ma setghax ikun jaf l-animus tal-intimat Sciberras fl-ittra minnu miktuba.

Illi huwa car ukoll illi l-persuna li ghandha tinstab responsabbli ghal dak li inkiteb ma kienx l-editur li ha hsieb illi joffri il-pagna tieghu lill-pubbliku sabiex jesprimi l-veduti tieghu, izda hija il-persuna li kitbet tali kummenti.

Ghalhekk, il-Qorti ma tarax illi l-intimat Farrugia, bhala editur, ghandu jinstab responsabbli ghal dak li inkiteb peress illi jidher illi ezericita d-diligenza mehtiega fl-ghoti ta' spazju lill-pubbliku. Dana, naturalment, ma kienx ikun minnu f'kaz li tali kitba saret minn artikolist regolari jew gurnalist imqabbad sabiex jikteb stejjer ghall-gazzetta.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti quddiemha,

Tghaddi biex taqta u tiddeciedi billi

Tilqa l-eccezzjonijiet tal-intimat Aleks Farrugia u tilliberah mill-osservanza tal-gudizzju,

Tichad l-eccezzjonijiet tal-intimat Jonathan Sciberras u ghalhekk

Tilqa t-talba attrici limitatament fil-konfront ta' Jonathan Sciberras u tiddikjara illi l-ittra intitolata "Biex tiskongra trid tkun pur" miktuba mill-intimat Jonathan Sciberras hija libelluza u malafamanti fil-konfront tar-rikorrent Randolph Spiteri u

Tillikwida d-danni sofferti minn Randolph Spiteri a tenur tal-Artiklu 28 ta' Kap 248 fl-ammont ta' elf Euro (€1,000) u Tikkundanna lill-istess Jonathan Sciberras ihallas lir-rikorrent Randolph Spiteri is-somma ta' elf Euro Maltin (€1,000).

Spejjez tal-proceduri odjerni ikunu kollha a kariku ta' Jonathan Sciberras.

< Sentenza Finali >

-----TMIEM-----