



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tas-16 ta' Dicembru, 2013

Avviz Numru. 308/2009

**Dr Simon Busuttil (ID 242669M), Dr Peter Fenech (ID
67468M) u Dr Austin Sammut (ID 23454M)**

VS

Felix Agius bhala editur tal-gazzetta Il-Kullhadd

Il-Qorti,

Rat l-avviz ippresentat fis 26 ta' Awissu 2009 fejn ir-rikorrenti ghamlu referenza ghal artikolu ippubblikat fil-harga tal-gazzetta Il-Kullhadd tat 2 ta' Awissu 2009 intitolat **'Propjeta' tal-Gvern b'kirja mizera ghall-Kumpannija ta' Simon Busuttil'** u, filwaqt illi stqarrew illi tali artikolu jikkontjeni allegazzjonijiet u insinwazzjonijiet foloz u malafamanti fil-konfront taghhom bi skop illi joffendu l-unur u l-fama taghhom u jesponuhom ghar-

redikolu, talbu lill Qorti tikkundanna lill-intimat ihallas dik is-somma li l-Qorti jidhrilha xierqa in linea ta' danni.

Rat l-artikolu ippubblikat fl-ewwel u tielet faccata tal-gazzetta tal-Hadd, Il-Kullhadd, u ippublikat fil-harga tat 2 ta' Awissu 2009.

Rat id-dokument mahrug mid-Dipartiment ta' l-Istampa illi jikkonferma illi Felix Agius kien l-editur tal-gazzetta Il-Kullhadd fil-gurnata meta saret il-pubblikazzjoni.

Rat ir-risposta ta' Felix Agius ippresentata fid-29 ta' Settembru 2009 fejn huwa laqa' ghal dak lillu attribwit billi stqarr illi l-pubblikazzjoni ma kienetx libelluza u kienet tikkonsisti f'gurnalizmu dwar materja ta' interess pubbliku accettabbli f'socjeta' demokratika u l-atturi kellhom kull dritt illi jirettifikaw kwalsiasi inezattezzi kieku riedu. Apparti minn hekk, huwa stqarr ukoll illi l-kummenti li saru kienu fair comment maghmul min buona fede fuq fatti sostanzjalment veri.

Rat l-affidavits ta' **Dr Simon Busuttil**, **Dr Peter Fenech** u **Dr Austin Sammut** lkoll ippresentati fit 22 ta' Ottubru 2010.

Semghet ix-xhieda bil-gurament ta' **Albert Mamo**, Kummissarju ta' l-Artijiet, moghtija fl 24 ta' Ottubru 2011 flimkien ma' dokumentazzjoni minnu ppresentata.

Rat illi ir-rikorrenti iddikjaraw, fl 24 ta' Ottubru 2011, illi ma kien fadallhom aktar provi x'jressqu.

Semghet ix-xhieda ta' **Francis Ghirxi**, moghtija fl-atti tal-kawza illi miexja kontemporanjament tal-kawza odjerna 310/09 fl-ismijiet 'Dr Simon Busuttil et vs Francis Ghirxi', u li inghatat fis 16 ta' Jannar 2012.

Semghet ix-xhieda ta' **Felix Agius** moghtija fis 16 ta' April 2012.

Semghet ix-xhieda in kontro ezami ta' Dr Simon Busuttil moghtija fil 15 ta' Ottubru 2012.

Semghet ix-xhieda in kontro ezami ta' Albert Mamo moghtija fis 16 ta' Novembru 2012.

Rat in-nota ippresentata mill-Kummissarju ta' l-Artijiet f'dokumentazzjoni minnu rikjesta u li giet ippresentata fl-atti tal-kawza illi miexja kontemporanjament tal-kawza odjerna 310/09 fl-ismijiet 'Dr Simon Busuttil et vs Francis Ghirxi'.

Semghet ix-xhieda tal-**PL Alan Scicluna**, rappresentant tad-Dipartiment ta' l-Artijiet, moghtija fl-atti tal-kawza illi miexja kontemporanjament tal-kawza odjerna 310/09 fl-ismijiet 'Dr Simon Busuttil et vs Francis Ghirxi', u li inghatat fis 16 ta' Jannar 2013.

Rat illi fil 5 ta' Lulju 2013 l-intimat iddikjara illi ma kellux aktar provi u ghalhekk il-kawza setghet tigi differita ghal finali trattazzjoni.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fil 25 ta' Ottubru 2013, wara liema data il-kawza giet differita ghallum ghas-sentenza.

Ikkunsidrat

L-ewwel u qabel kollox, il-Qorti tirrileva illi flimkien mal-kawza odjerna, kienu qed jinstemghu kontemporanjament il-kawzi 309/09 fl-ismijiet 'Dr Simon Busuttil et vs Glenn Bedingfield et' u 310/09 fl-ismijiet 'Dr. Simon Busuttil et vs Francis Ghirxi et', li lkoll kellhom l-istess meritu ta' fatti, rappurtati f'mezzi differenti, u ghalhekk, ghall-ekonomija tal-gudizzju, xhieda migbura f'kawza minnhom tghodd ukoll ghall-kawza odjerna, sa fejn rilevanti.

Ikkunsidrat

Il-kawza odjerna tirrigwarda rappurtagg illi sar da parte tal-gazzetta Il-Kullhadd ta' rizultat ta' Tender illi kien inhareg

fil 12 ta' Jannar 2007 mid-Dipartiment ta' l-Artijiet ghal kiri tal-propjeta 75/76, Triq id-Dejqa, il-Belt, Valletta.

Tali propejta, illi hija sitwata gewwa Triq id-Dejqa, tikkonsisti f'kamra wahda maqsuma fi tnejn ta' madwar tmien metri tul u erbgha metri wiesgha flimkien ma' basement ta' madwar erbgha metri kwadri, li ghal zmien twil kienet tintuza ghal skopjiet illeciti maghrufa li kienu jsiru fl-akwati ta' Triq id-Dejqa, izda imbghad giet abbandunata u ma kienetx qed tintuza.

Jirrizulta illi tali kmamar jiffurmaw parti minn korp ta' bini li, fil-maggoranza tieghu huwa propjeta tar-rikorrenti fejn ghandhom l-ufficini tagghom.

Jirrizulta illi, fi-17 ta' Gunju 1998, Dr Austin Samut, ghan-nom tad-ditta tar-rikorrenti Ganado Sammut Advocates, kien wera l-interess illi jakkwista tali zewgt ikmamar peress illi kienu jiffurmaw parti mill-blokk ta' l-ufficini tagghom u kien fi stat ta' abbandun. Jirrizulta, izda, illi tali offerta ma ntlaqietx.

Eventwalment, fit 12 ta' Jannar 2007 harget tender da' parte tad-Dipartiment ta' l-Artijiet ghal kera mhux ghal uzu ta' abitazzjoni tal-kmamar fuq imsemmija, ghal liema tender saru hames offerti. L-offerta tad-ditta tar-rikorrenti Ganado Sammut kienet l-aktar wahda baxxa, ossija Lm150 fis-sena, filwaqt illi l-oghla wahda kienet ta' Franco u Maria Laura Vassallo, fl-ammont ta' Lm650 fis-sena. L-offerenti l-ohra kienu Paul Magro, b'Lm180 fis-sena, Dr Charmaine u Christopher Galea, b'Lm305 fis-sena u Darren G Micallef b'Lm466 fis-sena.

Jirrizulta illi, la darba l-propjeta kienet tiffirma parti mill-blokk bini tal-ufficini tar-rikorrenti, fil 31 ta' Jannar 2007, Dr Austin Sammut kiteb lill-Kummissarju tal-Artijiet sabiex jitolbu illi jinghata ir-'right of first refusal' filwaqt illi fid 19 ta' Novembru 2007, huwa reggha kiteb fejn irriafferma id-dritt illi kellhom ghal 'right of first refusal' hemm kif stabbili fl-artikolu 1594 (4) (b) tal-Kodici Civili.

Jirrizulta illi fit-13 ta' Awissu 2009, it-Tqasima Propjeta tal-Gvern fi hdan id-Dipartiment tal-Artijiet gharrfet lid-ditta tar-rikorrenti Ganado Sammut illi d-Dipartiment kien accetta illi huma jinghataw 'ir-right of first refusal' bil-kundizzjoni illi huma jhallsu l-oghla offerta illi kienet saret lid-Dipartiment, jigifieri ta' Lm650 ossija €1575 fis-sena.

Jirrizulta, finalment, illi fl-20 ta' Awissu 2009, id-ditta tar-rikorrenti, Ganado Sammut, inghata il-kirja tal-fond 75/76, Triq id-Dejqa, Valletta, ghal periodu ta' hmistax-il sena, rivedibbli kull hames snin.

Ikkunsidrat

Fl-artikolu ippubblikat fil-gazzetta Kullhadd fit 2 ta' Awissu 2009, ossija tlett gimghat qabel ma gie ffirmat il-kuntratt finali, gie rrapurtat illi r-rikorrenti Dr Peter Fenech u Dr Austin Sammut kienu maghrufa li kienu qrib hafna tal-Partit Nazzjonalista, li dak iz-zmien kellu bhala wiehed mir-rappresntanti tieghu fil-Parliament Ewropew lir-rikorrent l-iehor Dr Simon Busuttil.

L-artikolu, li fil-faccata jintitola **"Propjeta' tal-gvern b'kirja mizera ghall-kumpannija ta' Simon Busuttil"** ikompli jghid illi l-kirja li kienet giet moghtija lir-rikorrenti *"qiegħda tkun deskritta bhala mizera minn esperti fis-suq tal-propjeta"*. Fit-tieni pagna ta' l-artikolu, taht it-titolu **"Sahansitra riedu jhallsu anqas"**, l-artikolu jkompli jghid illi ir-rakkomdazzjoni tal-Kummissajru li kienet harget fit 28 ta' Lulju 2009 saret *"f'gimgha fejn esponenti u l-midja (sic) tal-Partit Nazzjonalista tkellmu hafna fuq id-dritt li l-propjeta' tal-pubbliku titgwada mill-pubbliku, jew li jekk tkun mikrija, ghandha tithallas kirja xierqa"*.

F'kaxxa separata, imbghad, l-artikolu ikompli jghid illi l-istess gazzetta kienet ghamlet stharrig u irrizultala li, ufficju fi Triq Santa Lucia, il-Belt, li jikkonstsi zewgt ikmamar, toilet u bitha zghira kien jinkera €7,000 fis-sena filwaqt illi ufficju ta' erbat ikmamar fi triq San Pawl, il-Belt

kien jinkera €7,000 ukoll. L-istess stharrig indikalhom illi ufficju ta' sebat ikmamar fi Triq ir-Repubblika kien jinkera €18,000 fis-sena.

L-artikolu ukoll jippubblika ritratt tal-blokk kollu tal-ufficini tar-rikorrenti gewwa Triq id-Dejqa, liema ritratt juri wkoll iz-zewgt bibien, 75 u 76, li jiffurmaw parti minn blokk ferm akbar.

Ikkunsidrat

Qabel ma il-Qorti tghaddi biex taghmel il-kostatazzjoniet taghha dwar it-talbiet maghmulha fil-kawza odjerna, ikun opportun illi jigu l-ewwel ikkunsidrat id-difizi imressqa mill-intimat, liema difizi huwa principalment tnejn: ir-rapurtagg kien dwar materja ta' interess pubbliku u accettabbli f'socjeta demokratika u il-kummenti li hemm fl-artikolu kienu fair comment.

Il-liberta ta' l-espressjoni hija wahda mill-elementi kardinali ta' socjeta demokratika, fejn wiehed huwa protett, mill-Ligi w mill-Qrati, minn azzjonijiet ta' persuni li dwarhom saru l-kummenti, peress illi kullhadd ghandu d-dritt illi jesprimi l-veduti tieghu dwar haga pubblika.

Kif sahqet il-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kawza importanti CHAUVY AND OTHERS v. FRANCE (Application no. 64915/01) deciza fid-29 ta' Gunju 2004

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and 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 that pluralism, tolerance and broadmindedness without which there is no

“democratic society”. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

Madanakollu, kif stqarret l-istess Qorti Ewropeja, id-dritt illi wiehed jesprimi il-veduti tieghu ma hijex wahda assoluta, izda hija wahda soggetta ghal certi regoli cari u stabbiliti, kemm mill-gurisprudenza nostrana u dik internazzjoni, kif ukoll minn verji guristi mghallma f'dana il-kamp.

Kif intqal fil-kawza **Caruana v. Mifsud**, deciza fl-24 ta' Settembru 2004:

“Il-liberta` ta` espressjoni m`hijiex xi licenzja li wiehed ighid li jrid minghajr kontroll. Id-dritt invokat mill-appellant huwa suggett ghal certu kundizzjonijiet. Hekk per ezempju, fil-kaz Bladet Tromso and Stensaas v. Norway (20 ta` Mejju 1999) il-Qorti Ewropeja tad-drittijiet tal-Bniedem esprimiet ruhha hekk:

“Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the article the exercise of this freedom carries with it “duties and “responsibilities”, which also apply to the press. These “duties and responsibilities” are liable to assume significance when, as in the present case, there is a question of attacking the reputation of private individuals and undermining the “rights of others”...by reason of “duties and responsibilities” inherent in the exercise of the freedom of expression, 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 in order to provide accurate and

reliable information in accordance with the ethics of journalism.” (para 65)

F'socjeta demokratika bhalma hija dik Maltija, il-posizzjoni tal-gurnalist fis-socjeta ta' illum qieghda, aktar ma jghaddi z-zmien, issir importanti, peress illi c-cittadin huwa aktar konxju tad-drittijiet tieghu u, ghalhekk, huwa aktar ghattxan ghal informazzjoni illi tirrigwarda tali drittijiet u dak li qed isir fil-kamp lokali. Huwa ghalhekk illi l-gurnalist ghandu, illum aktar minn qatt qabel, dover illi jinforma lic-cittadin dak kollu illi huwa jqis bhala ta' interess pubbliku, filwaqt illi jassikura illi l-informazzjoni illi jaghti hija korretta u attendibbli u li qieghda tinghata in buona fede.

Kif stqarret il-Prim'Awla tal-Qorti Civili fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** fit-23 ta' Marzu, 2009,

“f'kawzi bhal prezenti, u cioe f'kawza ta' libell, hemm bilanc li ghandu jinzamm bejn id-dritt f'socjeta' demokratika li wiehed jghid u jesprimi ruhu u jsemmi l-opinjoni tieghu bl-aktar mod liberu u bejn id-dritt ta' kull cittadin li jgawdi reputazzjoni u l-isem tajjeb tieghu u dan dejjem fl-isfond ta' socjeta demokratika.”

Il-Qorti tal-Appell, imbghad, fl-istess kawza deciza fit-3 ta' Frar, 2012 ziedet tghid li

“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f'socjeta' demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu 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.”

Kif qalet il-Qorti Ewropea fil-kawza *Fresos & Roire vs France*

“the press plays an important role in a democratic society, although it must not overstep certain bounds, in particular in respect of reputation and rights of others. People exercising freedom of expression including journalists undertake duties and responsibilities.”

L-intimat, in difesa tal-argumenti imressqa kontra tieghu mir-rikorrenti, stqarr ukoll illi l-kummenti minnu maghmulha kellhom jitqiesu bhala 'fair comment'. F'dana il-qasam, ukoll, kemm il-Qrati nostrani u internazzjoni esprimew ruhhom in extenso u ghalhekk ikun opportun illi ssir referenza ghat-taghlim taghhom.

Dwar id-difiza ta' 'fair comment', kif jinghad f'**Gatley on Libel and Slander** :

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.

Huwa fatt illi d-“difiza” tal-“fair comment” dejjem kienet intiza sabiex tissalvagwardja dritt li hu importanti daqs dak li individwu jipprotegi r-reputazzjoni tajba tieghu, u cioe`id-dritt tal- espressjoni hielsa.

Kif inghad minn Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

Dwar in-natura ta' kumment, fil-ktieb Gatley on Libel and Slander (Sweet & Maxwell (London), 1981 jinghad is-segwenti:

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, pagna 294).

Konsiderazzjoni interessanti hafna illi dahlet fil-kuncett u l-bazi ta' 'fair comment' saret mill-Imhallef Bingham fil-kawza **Brent Walker Group plc v Time Out Ltd** [1991] 2 QB 33 deciza mill-Qorti tal-Appell Ingliza, fejn 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 interessanti hafna deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, **Spiller vs Joseph**, fejn saru konstazzjoni dwar id-difiza ta' 'fair comment' kif meqjusa kemm għewwa l-Ingilterra u fil-Qorti Europeja tad-Drittijiet tal-Bniedem, Lord Phillips għamel is-segwenti konsiderazzjonijiet:

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 kompli 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.

Ikkunsidrat

La darba l-posizzjoni ta' kif fair comment qieghed jigi kkunsidrat minn diversi guristi u qrati barra minn Malta kif ukoll Malta tidher ben stabbilita, il-Qorti thoss illi jkun opportun illi l-hames elementi imsemmija minn Lord Philips jigu ezaminat sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

(i) *"the words complained of were comment"* - Il-Qorti ma ghandha ebda dubju illi l-mod kif l-artikolu meritu tal-kawza odjern kien redatt kien attwalment kumment dwar dak li kien sar, jew li kellu jsir, peress illi ghalkemm l-artikolu kien ippubblikat fit 2 ta' Awissu 2009, l-ittra li nbghatet lir-rikorrenti intbghatet fit 13 ta' Awissu 2009. Il-kumment kien dwar il-mod kif inghata it-tender lir-rikorrenti w il-fatt li tali kirja kienet wahda misera meta mqabbla ma' kirjiet ohra.

(ii) *"the comment was on facts"* - Ghalkemm, mill-fatti kif prodotti, jidher illi l-kumment kien ibbazat fuq fatti illi kienu sehhew, jidher illi tali fatti ma kienux kompleti bir-rizultat illi taw stampa mhux kompleta u qarrieqa tal-kwistjoni kollha lic-cittadin.

(i) L-ewwel u qabel kollox, l-artikolu ma jaghti ebda indikazzjoni tad-daqs tal-ufficju li kien qieghed jinkera u lanqas ta' l-uzu illi tieghu kien isir fil-passatt u l-istat illi fih kien jinsab.

(ii) It-tieni, l-artikolist, mhux talli ma jaghti ebda indikazzjoni tac-cokon tal-ufficju, izda talli jippubblika ritratt tal-blokk tal-bini kollu illi fih jifforma parti l-ufficju li kien ser jinkera u l-artikolist iqabbel tali ufficju ma' tlett ufficini ohra ta daqs differenti minn dak ta' l-ufficju li kien ser jinkera lir-rikorrenti, u li kienu certament fi stat ferm ahjar minn dak li jidher li kien fih l-ufficju li kien ser jinkera lir-rikorrenti.

(iii) Finalment, l-artikolist naqas milli jghid illi attwalment kien hemm hames offerti ghal tali ufficju li kienu lkoll ferm anqas minn dawk li eventwalment accettaw li jhallsu ir-rikorrenti. Filwaqt illi lanqas isemmi minn kienu l-persuni l-ohra li offrew ghal tali fond wkoll, l-artikolist lanqas biss isemmi illi r-rikorrenti accettaw illi jhallsu daqs l-oghla offerta illi kienet saret, peress illi kienu

ezercitaw id-dritt taghhom ghax il-propjeta' tiffirma parti mill-propjeta taghhom.

(iii) *"the facts commented on constituted a matter of public interest"* - ma hemmx dubju illi l-fatt li propjeta' pubblika tinghata b'kera lill-terzi tista titqies bhala ta' interess pubbliku. Madanakollu, il-Qorti ma tistax ma tosservax illi hemm mijiet, jekk mhux eluf, ta' propretajiet tal-Gvern illi jigu mikrija lill terzi bl-istess metodu adoperata fil-kaz odjern, u ta' propretajiet ferm akbar u attrajenti minn dik meritu tal-kawza odjerna, izda ftit li xejn minnhom jinghataw il-prominenza illi inghatat dina t-tender. Il-Qorti tifhem ghalhekk illi l-interess pubbliku, kif meqjus mill-artikolist, kien bbazat principalment fuq il-fatt illi ir-rikorrenti kienu vicini mal-Partit Nazzjonalista, dak iz-zmien fil-Gvern.

(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;"* - in vista ta' dak gia stabbilit aktar 'l fuq, peress illi jidher car li l-fatti kif stabbiliti ma kienux korretti u kien jaghtu stampa mhux kompleta tal-kaz kollu, allura wiehed ma jistax jikkonkludi li tali kumment kien oggettivament 'fair comment', peress illi ma kienx kumment 'onest', izda kien wiehed intiz biex jitfa dell ikrah fuq ir-rikorrenti.

(v) *"the comment represented the defendant's honest opinion."* - Mill-provi kif prodotti jidher car illi, l-opinjoni tal-intimat ma kienetx wahda genwina u onesta izda kienet wahda intiza sabiex thammeg ir-reputazzjoni tar-rikorrent lkoll peress illi lkoll kienu jappoggaw il-Partit Nazzjonalista, dak iz-zmien fil-Gvern.

Il-Qorti wkoll taghmel referenza ghall-kummenti illi ghamel Lord Nichols fil-kawza **Cheng** [2001] EMLR 777, fejn irrefera ghall abbuz illi jista jsir mid-difiza tal-'fair comment' u x'hemm bzonn illi jintwera sabiex tali abbuz ikun ippruvat.

"Proof of malice is the means whereby a plaintiff can defeat a defence of fair comment where a defendant is abusing the defence. Abuse consists of using the defence

for a purpose other than that for which it exists. The purpose for which the defence of fair comment exists is to facilitate freedom of expression by commenting on matters of public interest. This accords with the constitutional guarantee of freedom of expression. And it is in the public interest that everyone should be free to express his own, honestly held views on such matters, subject always to the safeguards provided by the objective limits mentioned above. These safeguards ensure that defamatory comments can be seen for what they are, namely, comments as distinct from statements of fact. They also ensure that those reading the comments have the material enabling them to make up their own minds on whether they agree or disagree."

Il-Qorti, finalment, taghmel referenza ghal konsiderazzjonijiet illi l-Qorti Ewropeja tad-Drittijiet tal-Bniemed ghamlet fil-kawza **Delfi AS vs Estonia** deciza fl-10 ta' Ottubru 2013 fejn jirrigwarda il-bilanc li ghandu jsir bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt ghar-reputazzjoni tieghu illi kull bniemed ghandu. Dik il-Qorti kienet qalet is-segwenti:-

"where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed (see Axel Springer AG, cited above, §§ 89-95, and Von Hannover (no. 2), cited above, §§ 108-113).

Issa, fil-kaz odjern, ghalkemm wiehed mir-rikorrenti kien membru tal-Parlament Ewropew, u ghalhekk suggett ghal livell ta' kiritka ferm oghla minn persuna privata, iz-zewgt rikorrenti l-ohra, ossija Dr. Fenech u Dr Sammut, kienu

persuni privati li kienu maghrufa bl-affiljazzjonijiet taghhom lejn il-Partit Nazzjonalista, liema affiljazzjonijiet ma kienux tali, izda, illi tqieshom bhala persuni pubblici.

Apparti minn hekk, ir-relevanza ta' l-istorja rrapportata, tenut kont tal-propjeta li kienet qiegħda lilhom tinkera u d-daqs tagħha, hija certament in eccess ta' dak illi l-Qorti tippretendi li tinteressa lic-citaddin normali, u certament qatt ma kienet tigi rrapportata minn dana il-gurnal kieku ma kienx involut fih Dr Simon Busuttil u iz-zewgt rikorrenti l-oħra b'simpatija lejn il-Partit Nazzjonalista.

Għalhekk, il-Qorti thoss illi d-difiza tal-fair comment kif magħmulha mill-intimat kif ukoll id-difiza illi l-istorja kienet ta' interess pubbliku, t-tnejn li huma ma humiex sufficjenti biex jegħlqu id-dritt tar-reputazzjoni illi r-rikorrenti għandhom kull dritt li jippretendu li dina l-Qorti tipprotegi.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotti u,

Wara illi semgħet it-trattazzjoni ta' l-abbli difensuri tal-partijiet.

Tgħaddi biex taqta u tiddeciedi billi **tichad** l-eccezzjonijiet kollha ta' l-intimati u **tilqa** t-talba attrici, kif dedotta u **tiddikjara** l-artikolu ippublikat fil-harga tal-gazzetta Il-Kullhadd tat 2 ta' Awissu 2009 intitolat 'Propjeta' tal-Gvern b'kirja mizera għall-Kumpannija ta' Simon Busuttil' bhala malafamanti u libelluz fil-konfront tat-tlett rikorrenti u

A tenur ta' l-Artikolu 28 tal-Kap 248, **tikkundanna** lill-intimat iħallas lir-rikorrenti, in linea ta' danni, is-somma ta' tlett elef euro (€3,000).

Kopja Informali ta' Sentenza

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

< Sentenza Finali >

-----TMIEM-----