



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tas-27 ta' Jannar, 2014

Avviz Numru. 418/2012

**Anton Attard (ID 11572M) u Natalino Fenech (ID
2063M)**

**vs
Josef Caruana
(ID 150573M)**

Il-Qorti

Rat ir-rikors promotur ippresentat fl-10 ta' Dicembru 2012 fejn ir-rikorrenti, filwaqt illi jaghmlu referenza ghal artikolu ippubblikat fuq il-harga ta' l-Orizzont tat-2 ta' Ottubru 2012, intitolat '**Is-Saltna tal-Giden**', jitolbu lill dina l-Qorti sabiex tiddikjara tali artikolu bhala malafamanti u libelluz fil-konfront taghhom filwaqt illi jitolbu lill-Qorti sabiex tikkundanna lill-intimat, bhala editor tal-gurnal l-Orizzont, sabiex ihallas lill-atturi, in linea ta' danni morali, dik is-somma li tigi hekk likwidata mill-Qorti.

Rat ir-risposta ppresentata fit 8 ta' Jannar 2013 mill-intimat fejn huwa stqarr illi ma kien hemm xejn ingurjuz

f'dak li intqal izda hemm biss fatti u fehmiel li fuqhom huwa qeda d-dmirjiet tieghu li jgharraf lill-qarrejja dwar dak li kien ghaddej. Huwa zied jghid illi kien fl-interess tal-qarrejja illi jigu mgharrfa b'dik l-informazzjoni li kienet ta' interess pubbliku.

Rat l-affidavit tar-rikorrenti **Natalino Fenech** u **Anton Attard** ippresentat fil 31 ta' Mejju 2013 flimkien ma' dokumentazzjoni varja minnu ppresnetata.

Rat illi fil 31 ta' Mejju 2013 ir-rikorrenti iddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet ix-xhieda in ezami u kontro-ezami ta' **Josef Caruana** moghtija fit-23 ta' Settembru 2013.

Rat illi fil 11 ta' Novembru 2013, l-intimat iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet moghtija fis 17 ta' Jannar 2014, wara liema trattazzjoni il-kawza giet differita ghallum ghas-sentenza.

Ikkunsidrat

Il-meritu tal-kawza odjerna tikkoncerna artikolu illi l-intimat, bhala editur tal-gazzetta l-Orizzont, ippubblika fil-harga datata 2 ta' Ottubru 2012, intitolat 'Is-saltna tal-gideb', li dwaru ir-rikorrenti ihossuhom aggravati bil-kontenut tieghu tant illi ntavolaw il-proceduri odjerni quddiem il-Qorti ghal malafama a tenur tal-Kap 248 tal-Ligijiet ta' Malta.

Ir-rikorrenti Natalino Fenecu u Anton Attard, li dak iz-zmien, kienu l-Editur u Chief Executive Officer tal-Public Broadcasting Services rispettivament, jistqarru illi tul l-artikolu kollu, huwa qed jigu akkuzati ta' hafna affarjiet li ma humiex minnhom. Fost l-artikolu kollu kif miktub, ir-rikorrenti joggezzjonaw partikolarment ghas-segwenti brani fl-artikolu:

“Saru miljunarji kbar b’kontijiet bankarji fil-Gzejjer tal-Karibew, f’Cipru, fil-Genna Fiskali tal-Pacifiku, b’nies li l-biljuni u biljuni ta’ djun li ... marru kollha fi bwietho permezz ta’ kuntratti u konsulenzi, nies li jghixu u jitbahartu f’dinja ta’ lussu u holm mentri l-povri haddiema jiggennu biex ihallsu l-kontijiet ta’ Gonzi”

“ ... nies hziena: nies li ilhom ipappuha, huma u l-klikkek tahhom 25 sena shah, nies rghiba li ssakkeggjaw l-istat, nies li instawraw dittatorjat kostituzzjonali, nies li huma vili u viljakki li dawwru l-PBS fil-verzjoni Maltija ta’ Telekabul kif kien fil-Gwerra Bierda, nies li saru miljunarji kbar b’kontijiet bankarji fil-Gzejjer tal-Karibew, f’Cipru, fil-Genna fiskali tal-Pacifiku.”

“L-unici armi li ghandu fil-polverista tiegu GonziPN huma l-gideb u l-PBS okkupat mill-“Gang of Five” (Anton Attard, Natalino Fenech, Pierre Portelli, Lou Bondi u Peppi Azzopardi)”

“Ghalhekk wasal iz-zmien li nistqasu lilna nfusna jekk verament ahniex werrieta denju ta’ missirijietna. Dawk qatt ma qaghd u lura biex jiggieldu sal-ahhar, sal-ahhar siegha biex jiksbu r-rebha fuq l-ghedewwa li gew jahbtu ghalina. Missirijietna tqabdu u carcru demmhom anke jekk kienu qieghdin jiggieldu fi gwerer ta’ haddiehor. Din id-darba l-ghadu taghna mhux qieghed jahbat ghalina minn barra. Din id-darba l-ghadu qalil tal-progress, tal-liberta’, tal-gustizzja, tal-ghaqda nazzjonali, tal-futur ahja taghna u ta’ wliedna zbokka minn fostna. Ardit, rghib, arroganti, dittatorjali, fahxi, giddieb, diskrimintorju qieghed jhedded li se jidfen id-demokrazija vera u l-hena tal-poplu darba ghal dejjem.”

L-intimat, minn naha tieghu, iddefenda l-artikolu miktub minn ‘Cikku l-poplu’ billi stqarr illi huwa dmir ta’ l-esponent illi jgharraf lill-qarrejja b’dak li jkun ghaddej u zied jghid illi tali dmir jikkorrisponi ma’ l-interess tal-qarrejja li jkunu mgħarrfa b’dak li jkun ghaddejn ta’ interess pubbliku.

Fix-xhieda tieghu, l-intimat jinsisti illi l-artikolu ma kienx fuq ir-rikorrenti izda kien fuq is-sistema li kien hemm

vigenti dak iz-zmien maghrufa bhala 'GonziPN'. Huwa jishaq illi ir-rikorrenti jissemew biss b'mod generali u bhala parti mill-artikolu peress illi l-artikolu kien intiz unikament sabiex jattakka is-sistema GonziPN illi fiha, ir-rikorrenti, kienu qrib hafna. Huwa jistqarr illi l-unika parti mill-artikolu fejn jissemew ir-rikorrenti direttament huwa meta irreferew ghal "Gang of Five", liema kliem, huwa stqarr, uzawha flok ma' uza il-kelma klikka, peress illi fl-artikolu, il-kelma "klikka" kienet qed tirreferi ghas-sistema ta' GonziPN u ghalhekk kelha ssir distinzjoni bejn is-sistema GonziPN u il-hames persuni illi kienu qed imexxu il-PBS.

Huwa stqarr illi kien Membru Parlamentari ta' dak iz-zmien, Dr Franco Debono, illi kien iddeskrivihom bhala qrib klikka tal-hazen u l-intimat kien konvint illi ir-rikorrenti, flimkien mat-tlett persuni l-oħra, li ma ddahhlux fil-PBS bil-forza izda ntghazlu, kienu fi klikka li kienet qrib il-klikka tal-hazen ta' GonziPN. Kien ghalhekk illi huwa ssemew fl-artikolu, liema artikolu kien qiegħed jattakka lis-sistema li kien hemm dak iz-zmien fil-gvern, jigifieri is-sistema GonziPN.

Ikkunsidrat

Illi qabel ma tghaddi biex tagħmel il-konsderazzjoni legali tal-kaz, ikun opportun illi l-Qorti tghaddi biex tezamina l-artikolu meritu tal-kawza odjern u l-mod kif inkiteb kif ukoll x'intal fih.

L-artikolu, intitolat "Is-saltna tal-gideb", jibda billi jipproduci silta minn ktieb mitkub mid-dittatur Nazzista Adolf Hitler, intitolat "Tabletalk", liema silta titkellem dwar il-poter illi Gvern ikollu meta jghaddi informazzjoni lill cittadini li jkunux jafu jahsbu, ghax, "jekk ikun jaf jitmagħhom propaganda kontinwa, dan jikkonvincihom li huma qiegħdin il-genna meta fil-fatt ikunu fl-abissi tal-infern u li hajjithom mizerabbli hija l-Gnien ta' Eden".

Sussegwentement, l-artikolu jibda bi paragrafu illi juri l-hsieb kollu wara l-artikolu kollu u li, ghalhekk, huwa opportun illi jiri rappurtat f'tali sentenza għall-kompletezza tagħha:

“Jista jkun li la GonziPN u lanqas l-istrategisti tieghu qatt ma qraw il-ktieb ikkwotat hawn fuq, izda jekk ma qrawhx, wiehed ikollu jammetti li huma qieghdin jimxu fuq dawn l-ideat tad-dittatur Nazista.”

Ikkunsidrat

Fl-eccezzjonijiet maghmulha mill-intimat, id-difiza minnu mressqa, ghalkemm mhux indikata hekk direttaent, hija dik ta' “fair comment”, u dana qieghed jinghad ghax fl-eccezzjonijiet, l-intimat jistqarr illi *“il-kitba u stampat in kwstjoni ma fihom xejn ingurjuz izda hemm biss fatt u fehmiel fuqhom, kollox kif hu dritt li jsir f'socjeta demokratika”*.

Ghalhekk, ikun opportun illi l-Qorti tezamina il-kontenut ta' dak indikat fl-artiklu fl-isfond tad-difiza ta' “fair comment”.

Tenut kont ta' dan, u qabel ma jsiru aktar evalwazzjonijiet, il-Qorti ma tistax ma tosservax illi ir-rikorrenti, fil-kapacita taghhom ta' Editur u Chief Executive Officer ta' l-istazzjoni nazzjonali televiziv u tar-radio, Public Broadcasting Services, ghandhom jitqiesu bhala persuni pubblici u li, ghalhekk, fil-konfront taghhom, japplika livell ta' kritika oghla minn ta' cittadin kwalumkwe.

Kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbracjata mill-Qorti Maltin, intqal illi:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every

word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Kif gia gie stabilit, id-difiza ta' l-intimat hija il-*'fair comment'*, u dwar tali difiza, 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.

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.

Gatley on Libel and Slander ikompli jiddeskrivi n-natura ta' kumment billi jghid 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).

Osservazzjoni interessanti illi saret mill-Qorti tal-Appell Ingliza fil-kawza **Brent Walker Group plc v Time Out Ltd** [1991] 2 QB 33 dwar il-bazi tal 'fair comment' giet jinghatat minn Bingham LJ li dwarha qal is-segwent:-

"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."

Tali insejnament, ghalhekk, jipprovdi illi wiehed jista juza id-difiza tal-fair comment jekk tali kummenti huwa dwar fatti veri. Sakemm il-fatti huma veri, allura il-kumment, ahrax kemm hu akrax, ser jirnexxi. Madanakollu, jekk tali fatti ma humiex veri, allura id-difiza tal-'fair comment' ma tirnaxxi.

Ezami dettaljata tad-difiza tal-"fair comment" u kif dina tinkwadra ruhha kemm fil-gurisprudenza Ingliza u tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem, fejn hija maghrufa bhala "value judgment", inghatat fil-kawza deciza mill-Qorti ta' l-Appell Ingliza fl 1 ta' Dicembru 2010 fil-kawza **Spiller vs Joseph** fejn Lord Phillips ghamel is-segwent

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.

Ikkunsidrat

Abbazi tal-gurisprudenza kif enuncjata minn Qrati li fuqhom il-Qrati taghna bnew il-gurisprudenza applikabbli f'Malta, huwa opportun illi jigu ezaminati l-hames elementi imsemmija minn Lord Philips sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

(i) *"the words complained of were comment"* - kif stqarr l-istess intimat fix-xhieda tieghu quddiem dina l-Qorti, ma hemmx dubju illi l-kliem li intuzaw tul l-artikolu

kienu kummenti dwar is-sitwazzjoni politika li kienet renjanti fiz-zmien meta l-artikolu kien ippubblikat. L-intimat, fl-istess xhieda tieghu, jinsisti illi l-kummenti li saru tul l-artikolu kollha kienu kummenti relatati unikament mas-“sistema GonziPN” illi kienet qieghda topera dak iz-zmien taht l-amministrazzjoni tal-Gvern Nazzjonalista mmexxija mill-Prim Ministru Dr Lawrence Gonzi. Tali fatt, madanakollu, ma jidhirx rispekkjat fid-dicitura ta’ l-introduzzjoni ta’ l-artikolu u li, bhala introduzzjoni, jaghti indikazzjoni lill qarrejja ordinarju il-bazi fuq xiex huwa imsejjes l-artikolu. Di fatti, il-Qorti tosserva illi l-artikolu, wara illi jikkwota twemmin illi kellu Adolf Hitler fuq l-uzu tal-mezzi tal-kommunikazzjoni, twemmin adoperat minn kull regim totalitarju esistenti fid-dinja, ikompli jghid illi *“GonziPN u (lanqas) l-istrategisti tieghu ... qeghdin jimxu fuq dawn l-ideat tad-dittatur Nazista”*

(ii) *“the comment was on facts”* - L-artikolu kollu huwa mizghud, fl-ewwel parti tieghu, b’referenzi ghal diversi istanzi fejn allegazzjonijiet illi saru fi-konfront ta’ persuni fil-kamp oppost tal-Partit Nazzjonalista, ma gewx ippruvati jew inkella gew ippruvati bhala inveritjeri mill-Qrati taghha. F’dana is-sens, l-artikolu isemmi l-akkuzi illi kienu saru kontra Lord Strickland mill-Partit Nazzjonalista li huwa kien jiehu sehem f’riti Mazuni, liema akkuzi gew ibbazati fuq xhieda illi, skond l-artikolist, l-istess Partit Nazzjonalista kien hadem lill certa “Terinu” sabiex jghidhom imbghad eventwalment gew ippruvati bhala inveritjeri. Isemmi ukoll istanza fejn l-Arcisqof Michael Gonzi, antenat ta’ Lawrence Gonzi, allega illi il-Malta Labour Party kien inghata flejjes mill-Gvern Ingliz bil-mohbi, ghal liema allegazzjoni, l-artikolist ikompli jghid, l-Arcisqof Gonzi qatt ma ttiehdu proceduri kontra tieghu peress illi kien igawdi bil-‘privilegium fori’. L-artikolu imbghad isemmi meta l-Qrati sabu lill Dr Eddie Fenech Adami hati ta’ libell talli qal illi Dr Alfred Sant kien impedixxa lill ibnu milli jidhol fl-Universita’. Isemmi ukoll il-fatt illi l-Gvern tal-gurnata kien approva zieda ta’ hames mitt Euro fil-gimgha ghal paga taghhom bil-mohba tal-poplu. Imbghad jghaddi biex isemmi l-allegazzjonijiet illi kienu qed jaghmlu il-Partit Nazzjonalista fuq Joseph Muscat, dak iz-zmien Kap ta’ l-Opposizzjoni, li kienu qed jallegaw li Muscat kien ser jiffriza il-pagi f’Malta. L-artikolist

ikompli jghid li, bhalma hemm “serial killers”, hemm “serial liars”, u dawna l-istanzi kienu prova ta' dan. Huwa fl-isfond ta' dawna l-kummenti illi imbghad l-artikolist jghaddi beix isemmi lir-rikorrenti.

(iii) *"the facts commented on constituted a matter of public interest"* -L-istanzi kollha imsemmija mill-artikolist kienu kollha okkazzjonijiet li certament kienu ta' interess pubbliku.

(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;"* - tent kont tal-mod kif l-artikolu gie redatt u d-direzzjoni moghtija lill-qarrejj sa mill bidu tieghu, jidher car illi l-artikolist ma kienx qieghed jikkumenta dwar is-sistema GonziPN biss, kif xehed l-intimat quddiem dina l-Qorti, izda wkoll dwar 'l-istrategisti' tieghu. Kunsidrat dan, il-Qorti ma tistax ma tinutax illi l-unika persuni imsemmija fl-artikolu kollu, u li allura il-qarrejj komuni seta jikkonkluda illi kienu l-istrategisti imsemmija mill-artikolist, kienu iz-zewgt rikorrenti flimkien ma' tlieta ohra, indikati lkoll bhala il-“Gang of Five”.

Il-kummenti li ghamel l-artikolist huma carament malafamanti u libelluzi fil-konfront tar-rikorrenti, u certament ma jistghux jitqiesu bhala oggettivament “fair” kif rikjest minn dana l-element li qed jigi ezaminat. Li wiehed jattribwixxi lir-rikorrenti l-attribwit illi huma jiffurmaw parti mill “Gang of Five”, meta il-qarrejj ordinarju jifhem illi tali deskrizzjoni ghandha aktar konnotazzjonijiet ta' grupp ta' nies fid-dinja tal-kriminalita' milli ta' xi nies fil-media, abbinata mal fatt illi, ftit qabel, jissemmw “serial killers” flimkien ma' “serial liars” huwa indikazzjoni cara illi l-awtur ta' l-artikoli ried jimputa agir kriminali da' parte tar-rikorrenti fl-operat tas-sistema GonziPN. Meta wiehed jaqra l-artikolu kollu, u l-imputazzjonijiet kollha li l-artikolist jaghmel, fosthom *“li l-unici armi fil-polverista tieghu GonziPN huma l-gideb u l-PBS okkupa mill-Gang of Five”*, il-qarrejj ordinarji jasal ghal konkluzjoni illi r-rikorrenti huma responsabbli ta' atti kriminali bhalma Goebbels, ufficjali ewlieni tal-media ta' Hitler, kien instab hati taghhom. Tali kummenti, li jirranzentaw l-incident u l-ghodju kbir illi sehh fil-passat u li ma ghandu qatt ikun jerrggha jirrepeti ruhhu, ma jistghu qatt jitqiesu bhala

kummenti oggettivament "fair" minn dina l-Qorti, peress illi huma kummenti intizi unikament sabiex iwasslu messagg ta' glied, ta' ghodju u ta' insurrezzjoni meta, f'socjeta ta' illum, il-qarrejj ordinarju huwa ferm aktar kundizjonat b'dan li jghidu il-media ta' illum minn qatt qabel. Il-gurnalist ghandu obbligu li, filwaqt li jimpertixxi l-informazzjoni kollha ta' interess pubbliku lill qarrejj, ma jiffomentax id-disgwid u jincita l-glied u ghodju, kif qieghed jaghmel l-artikolist fil-kaz in ezami. Kullhadd ghandu d-dritt ta' l-opinjoni tieghu, izda gurnalist ghandu obbligu oghla minn dik ta' persuna normali illi jesprimi l-opinjoni tieghu minghajr ma jincita in-nies. Kliem bhal "*Din id-darba l-ghadu qalil tal-progress, tal-liberta' tal-gustizzja, tal-ghaqda nazzjonali, tal-futur ahjar taghna u ta' wliedna zbokka minn fostna*" miktuba wara illi ftit qabel qal "*Missirijietna tqabdu u carcru demmhom anke jekk kienu qeghdin jiggieldu fi gwerer ta' haddiehor. Din id-darba l-ghadu taghna mhux qieghed jahbat ghalina minn barra*" huma turija cara illi tali kummenti qatt ma jistghu jitqiesu bhala oggettivament "fair".

(v) "*the comment represented the defendant's honest opinion.*" - bhalma saħqu kemm il-Qorti tal-Appell Ingliza kif ukoll il-House of Lords, ma kienx obbligu tal-intimat illi jipprova li ma kellux malizia fil-kumment tieghu, peress illi huwa prezunt li huwa onest fil-kitba tieghu. Il-Qorti madanakollu, filwaqt illi taqbel illi l-artikolist u l-intimat setghu kienu onesti fil-veduti taghhom, ma tistax ma tirrilevax illi l-kliem uzati jidher car illi huma fil-konfront tar-rikorrenti, fost nies ohra, u huma kliem ta' ghodju kbir illi jmur oltre kull kumment accettabbli fis-socjeta moderna ta' illum.

Kunsidrat dana kollu, il-Qorti ma ghandha ebda dubju li l-kliem adoperat fl-artikolu kienu kliem intizi lejn, fost persuni ohra, ir-rikorrenti, u kienu kliem li ebda qarrejj ordinarju ma seta oggettivament jezamina fid-dawl tal-fatti u allegazzjonijiet kollha kif indikati mill-intimat u l-artikolist, u ghalhekk ma jistghu qatt jigu accettati bhala difensibbli.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u semghet ix-xhieda kollha

Kopja Informali ta' Sentenza

Tghaddi biex taqta u tiddeciedi l-kawza billi

Tichad l-eccezzjonijiet kollha ta' l-intimat.

Tilqa it-talbiet tar-rikorrenti u tiddikjara l-artikolu ippubblikat fuq il-harga ta' l-Orizzont tat-2 ta' Ottubru 2012, intitolat 'Is-Saltna tal-Giden' bhala malafamanti u libelluz fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna lill-intimat, in linea ta' danni a tenur tal-Art 28 tal-Kap 248, ihallas lir-rikorrenti in soldium bejniethom is-somma ta' hamest elef Euros (5,000) flimkien ma' l-ispejjez kollha tal-proceduri odjerni.

< Sentenza Finali >

-----TMIEM-----