



MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta tat-12 ta' Frar, 2015

Avviz Numru. 4/2013

Simon Vella
(ID 215965M)

vs

Carmel Cacopardo
(ID 221956M)

Il-Qorti,

Rat ir-rikors ipprezentat fl-4 ta' Jannar 2013 mir-rikorrent fejn, filwaqt illi ghamel referenza ghall pubblikazzjoni illi dehret fuq is-sit elettroniku 'Blog ta' Carmel Cacopardo' fit 3 ta' Jannar 2013 intitolata "**Mhux biss l-Imhallfin ...** ", talab lill-Qorti tiddikjara illi tali pubblikazzjoni kienet malafamanti u libelluza fil-konfront tieghu u intiza sabiex ittellef jew tnaqqas ir-reputazzjoni ta' l-istess rikorrenti, u ghalhekk tikkundanna lill-istess intimat ihallsu danni a tenur ta' l-Artikolu 28 tal-Kap 248.

Rat ir-risposta ta' l-intimat ipprezentat fis 6 ta' Frar 2013 fejn laqa' ghal dak lilu imputat billi sahaq illi l-artikolu ma huwiex libelluz fil-konfront tal-attur u ma hemm ebda forma ta' kritika indirrizata lejha filwaqt illi insista illi dak li ntqal fl-artikolu jikkonsisti f'"fair comment" dwar kwistjoniet ta' interess pubbliku u kritika accettabbli f'socjeta demokratika u sahaq illi minn imkien fl-artikolu ma johrog l-animus injuriandi rikjest mill-Ligi fil-konfront ta' l-attur personalment.

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Rat il-verbal tat 22 ta' April 2013 fil-kawza 1/13 fl-ismijiet **Lawrence Zammit vs Josef Caruana** fejn il-partijet qablu illi x-xhieda migbura f'dik il-kawza ghandha tapplika ghall-kawza odjerna ukoll.

Semghet ix-xhieda ta' **Simon Vella** moghtija fit-22 ta' April 2013 fil-kawza 1/13 FDP flimkien ma dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' Simon Vella moghtija fl-10 ta' Gunju 2013 fil-kawza 1/13 FDP.

Semghet ix-xhieda ta' **Lawrence Zammit** moghtija fl-10 ta' Gunju 2013 fil-kawza 1/13 FDP.

Semghet ix-xhieda ta' l-intimat **Carmel Cacopardo** moghtija fit-23 ta' Settembru 2013 fil-kawza 1/13FDP.

Rat illi fit-23 ta' Settembru 2013 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet ix-xhieda u kontro ezami ta' l-intimat, il-Perit **Carmel Cacopardo**, moghtija fil-15 ta' Novembru 2013 fil-kawza 2/13 FDP fl-ismijiet '**Lawrence Zammit vs Carmel Caccopardo**'.

Rat illi fis 27 ta' Jannar 2014 il-partijet qablu illi x-xhieda migbura fil-kawza 2/13 FDP fl-ismijiet '**Lawrence Zammit vs Carmel Caccopardo**' tapplika ghall-kawza odjerna ukoll.

Semghet ix-xhieda in kontro ezami ta' Simon Vella moghtija fis 27 ta' Jannar 2014 u fit 2 ta' Mejju 2014 u dokumenti minnu esebiti.

Rat in-nota b'dokumenti esebita minn Simon Vella fis 7 ta' Marzu 2014 fil-kawza 2/13 FDP.

Semghet ix-xhieda in kontro ezami ta' Lawrence Zammit moghtija fit-2 ta' Mejju 2014 li saret fil-kawza 2/13 FDP.

Semghet ix-xhieda ta' **Owen Galea**, moghtija fit 22 ta' Settembru 2014 fil-kawza 5/13 FDP fl-ismijiet "**Simon Vella vs Joseph Caruana**" flimkien ma' dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' Josef Caruana, moghtija fit 22 ta' Settembru 2014, fil-kawza 5/13.

Rat id-dokumentazzjoni esebita mill-intimat fl-10 ta' Novembru 2014 fil-kawza 2/13 FDP.

Semghet it-trattazzjoni tal-abbli difensuti tal-partijiet illi saret fid 19 ta' Jannar 2015.

Rat il-verbal tas-seduta tal-5 ta' Frar 2015 fejn il-partijiet regghu ikkonfermaw, ghal kull buon fini, illi x-xhieda migbura fil-kawzi 1/13 FDP fl-ismijiet "**Lawrence Zammit vs Josef Caruana**" u 5/13 FDP fl-ismijiet "**Simon Vella vs Joseph Caruana**" ghandhom, fejn applikabbli, jghoddu ghal kawza odjerna ukoll.

Ikkunsidrat

Il-kawza odjerna tirrigwarda '*blog post*' ossija artikolu ippubblikat mill-intimat fuq il-blog tieghu intitolat '**Blog ta' Carmel Cacopardo**', kif ikkonferma l-istess intimat, u li kien

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ibbazat fuq zewgt stejjer illi kienu qed jidhru rrapportati fil-gazzetti l-Orizzont u iNews, u li dwarhom l-intimat ikkummenta fil- 'post' tieghu.

Ghandu jinghad illi kemm ir-rikorrenti kif ukoll Lawrence Zammit, rikorrenti f'proceduri ohra fuq meritu identiku, kienu bdew proceduri dwar dina l-istorja kontemporanjament mal-proceduri odjerni, kontra il-gazzetta l-Orizzont u il-gazzetta elettronika iNews, kawzi 1/13 FDP fl-ismijiet "**Lawrence Zammit vs Josef Caruana**" u 5/13 FDP fl-ismijiet "**Simon Vella vs Joseph Caruana**" liema proceduri gew ceduti wara illi l-partijiet waslu fi transazzjoni bejniethom.

Il-proceduri odjerni, madanakollu, baqghu ghaddejjin peress illi l-partijiet ma waslux fi transazzjoni bejniethom.

Ikkunsidrat

Il-Blog meritu tal-kawza odjerna huwa intitolat "**Mhux biss l-Imhallfin**" u, taht ritratt fejn juri tlett karti tal-flus tad-denominazzjoni ta' hames mitt euro (€500), mitejn euro (€200) u mitt euro (€100), mdendlin b'labra ta' inxir fuq habel ta' l-hasil, hemm miktub is-segwent:

"l-ewwel ahbar interessanti ippubblikata din is-sena hi ta' investigazzjoni fl-Italia dwar hasil ta' flus. Ir-rapporti gew ippubblikati fil-media tal-GWU, fl-Orizzont u f'iNews u jirrigwardaw zewgt persuni afdati sew mill-Gvern ta' Lawrence Gonzi. Zewgt persuni li kienu għodda li intuzaw fid-diversi postijiet fejn inhatru matul dawn l-ahhar snin.

Il-posizzjoni li għadhom qed jokkupaw dawn iz-zewgt persuni fil-Malta Enterprise u Transport Malta jirrikjedu azzjoni immedjata min-naha tal-Gvern.

Mhux biss l-Imhallfin jixhtu d-dellijiet meta jkun taht investigazzjoni!"

Ikkunsidrat

Mill-provi prodotti jirrizulta illi l-artikolu meritu tal-kawza odjerna gie ippubblikat f'it gimghat wara kienet inqalghet skandlu li fih kien involut Imhallef u li wassal sabiex jirriżenja mill-kariga tieghu u jinbdew proceduri kriminali fil-konfront tieghu ta' korruzzjoni.

Jirrizulta ukoll mill-provi, illi l-istorja kollha kienet ibbazata fuq investigazzjoni illi kienet qed taghmel il-Pulijiza Taljana u Maltija fis-sena 2011 dwar investimenti illi certa Gaetano Buglisi u persuni ohra taljani involuti mieghu kellu f'Malta, liema investigazzjonijiet kienu jinvolvu wkoll il-kumpanija fl-isem ta' Notabile Consulting Group Limited, illi fiha ir-rikorrenti huwa kemm azzjonist kif ukoll direttur.

Jirrizulta, mill-provi, prodotti, illi s-socjeta Notabile Consulting Group Limited kienet qieghda taghti s-servizzi taghha bhala Direttur ta' socjetajiet Sarracenia Holdings Limited u Erygium Limited, li jirrizulta kienu qed jigu investigati.

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Jirrizulta illi, socjeta ohra, bl-isem ta' Notabile Fiduciaries Limited, kienet qed tipprovdi s-servizzi taghha bhala nominee company f'dawn iz-zewgt kumpanniji, u kienet di fatti l-azzjonista principali f'dawn iz-zewgt kumpanniji Sarracenia Holdings Limited u Eryngium Holdings Limited.

Jirrizulta illi Lawrence Zammit kien biegh l-ishma tieghu fis-socjeta Notabile Consulting Group Limited fil-31 ta' Dicembru 2008 lis-socjeta Notabile Fiduciaries Limited u ma baqax aktar Direttur ta' l-istess socjeta.

Jirrizulta ukoll illi s-socjeta Notabile Fiduciaries Limited hija kumpannija illi taghha l-uniku azzjonist, mil-31 ta' Dicembru 2008 'l quddiem, kien Simon Vella.

Jirrizulta illi s-socjeta Notabile Consulting Group Limited u Notabile Fiduciaries Limited kienu tqabdbu minn Gaetano Buglisi, sabiex jiffurmaw kumpannija hawn Malta bl-isem ta' Eryngium Limited, u wara, illi kienu saru l-verifiki kollha, din is-socjeta giet iffurmata u kienet gestita mis-socjeta Notabile Consulting Group Limited, li kienet direttur taghha filwaqt illi s-socjeta Notabile Fiduciaries Limited kienet l-azzjonista taghha.

Jirrizulta illi, mument minnhom fis-sena 2011, Simon Vella, li jmexxi z-zewgt kumpanniji Notabile Consulting Group Limited u Notabile Fiduciaries Limited, gie kkuntattjat mill-Pulizija Maltija dwar investigazzjoni li kienet qed issir fuq possibilita' ta' hasil ta' flus u Simon Vella kif ukoll is-socjetajiet Notabile gheni lill-Pulizija fl-investigazzjoni.

Jirrizulta illi, waqt illi kienu qed isiru tali investigazzjoni, is-socjeta Notabile Fiduciary Limited indunat illi l-klijent ma kienx qieghed jikkomunika aktar maghha u, kif kellha kull dritt, fil-31 ta' Awissu 2011, ghaddiet l-ishma kollha illi hija kellha fis-socjeta Eryngium Holdings Limited fisem Gaetano Buglisi, sabiex ikun jista jibqa jopera l-kumpannija direttament hu stante illi s-socjeta Notabile Fiduciary Limited ma kellha ebda kuntatt iehor mieghu, Nelfrattemp, is-socjeta Notabile Consulting Group Limited irrizenjat minn Direttur tas-socjeta. Tali dokumentazzjoni giet notifikata lill Malta Financial Services Authority fid-9 ta' Settembru 2011.

Jirrizulta illi fid 9 ta' Novembru 2011, r-rikorrent, wara korrispondenza mal-Malta Financial Services Authority, gharraf lill-istess Authorita illi huma ma kienux ghadhom joffru servizzi ta' 'registered office services' lis-socjeta Eryngium Limited, u talbu ili tali ittra tigi inserita fil-file pubbliku tas-socjeta Eryngium Limited.

Jirrizulta illi, a differenza ta' dak illi kien qieghed jigi rappurtat fit 2 ta' Jannar 2013 fuq l-Orizzont u fuq is-sit elettroniku iNews, ma kien hemm ebda investigazzjoni fis-socjetajiet Notabile Fiduciary Limited u Notabile Consulting Group Limited u, di fatti, fil-25 ta' Jannar 2014, il-Pulizija harget ittra lill Simon Vella ghan-nom ta' Notabile Consulting Group Limited, fejn intqal is-segwenti:

" this is to inform whoever is interested that in the investigations made by the Economic Crimes (Malta Police) regarding Gaetano Buglisi et, company Notabile Consulting Group Limited and its subsidiary companies, together with the directors of the companies, in particular Mr Simon Vella, were never investigated by the police.

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The said companies and persons only assisted the police during an investigation that was being made vis-a-vis some third companies and persons that were making use of the financial services being offered by Notabile Consulting Group Limited and its subsidiary companies."

Ikkunsidrat

Ir-rikorrent, kemm fix-xhieda tieghu kif ukoll fis-sottomissjonijiet tieghu, insista illi huwa hassu malafamat u ingurjat bil-fatt illi l-artikolu jsemmi investigazzjoni fl-Italja dwar hasil ta' flus u jabbina lir-rikorrent, bhala wiehed minn "zewg persuni afdati sewwa" mill-Gvern tal-gurnata ma' tali investigazzjonijiet, tant illi fl-ahhar tal-bran jghid "*mhux biss l-Imhallfin jixhtu dellijiet meta jkunu taht investigazzjoni*".

Ir-rikorrent, imbgħad, hassu wkoll malafamat bil-fatt illi l-intimat abbina tali kaz mal-kaz illi kien sehh ftit jiem qabel ta' Imhallef li kien tressaq il-Qorti fuq akkuzi ta' tixhim u dana sabiex l-intimat isahhah l-argument tieghu fejn insista illi l-Gvern kellu jiehu azzjoni immedjata kontra ir-rikorrent in vista tal-posizzjoni illi huwa kien jokkupa.

Ir-rikorrent, fix-xhieda tieghu tat-22 ta' April 2013, stqarr illi, bhala rizultat tar-rappartagg ta' l-istorja fuq il-media lokali, diskussjonijiet illi huwa kellu personalment ma' bank lokali sabiex jinghata facilita' bankarja twaqqfu mill-Bank u socjeta illi kienet tipprovvdilu assikurazzjoni professjonali, peress illi huwa kien Awditur, gharrfitu illi ma kienetx intenzjonata tkompli tikkoprieh.

Ir-rikorrent, finalment, jishaq illi huwa sofra hsara ta' reputazzjoni tieghu peress illi kellu jogħqod jagħti spjegazzjoni tas-sitwazzjoni reali tal-kaz lill-kull min kellu x'jaqsam mieghu fuq bazi professjonali.

Ikkunsidrat.

L-intimat, fix-xhieda illi huwa ta' fil-15 ta' Novembru 2013, sahaq illi huwa ppubblika l-blog tieghu fit-3 ta' Jannar 2013 wara illi ra l-artikoli ppubblikat fuq il-gazzetta Orizzont u iNews, u di fatti huwa għamel referenza għal tali artikoli fuq il-blog post tieghu stess, sabiex il-qarrejja ikunu jistghu jivverifikaw dak illi kien qieghed jingħad.

Huwa sahaq illi l-intenzjoni tieghu, bhala persuna fil-kamp politiku, kienet illi jinsisti "*li tinkiser l-omerta' illi hawn fil-pajjiz li kollox jinzamm mistur u li l-affarjiet jigu investigati b'mod apert.*"

Huwa stqarr illi kemm Simon Vella kif ukoll Lawrence Zammit kienu persuni pubblici peress illi kellhom kariga pubblika dak iz-zmien, fejn Simon Vella kien fuq il-Board ta' Transport Malta filwaqt illi Lawrence Zammit kien Chairman tal-Malta Enterprise dak iz-zmien, u kien għalhekk illi huwa hass illi dina l-istorja, li kellha portata serja hafna, kellha tigi investigata mill-Gvern u mill-Pulizija.

Finalment, l-intimat, fid-difiza tieghu, sahaq illi, l-ewwel u qabel kollox, ma kienx indirizza l-artikolu fil-konfront tar-rikorrent, filwaqt illi sahaq illi dak illi huwa qal kien 'fair comment' u għalhekk kellu jitqies bhala tali.

Ikkunsidrat

Jirrizulta mid-difiza imressaq mill-intimat, illi l-ewwel difiza minnu imressqa kienet dik illi tirrigwarda l-fatt li huwa, bl-ebda mod ma identifika lir-rikorrent fl-artikolu, u ghalhekk ma setax jinstab hati ta' malafama fil-konfront tar-rikorrent.

Fil-kawza **Alphonse Farrugia vs Joseph Fava et**, deciza mill-Qorti ta' l-Appell (Superjuri) fil 15 ta' Jannar 1997, intqal is-segwent:

Dwar l-identifikazzjoni tal-persuna allegatament malafamata hu ghal kollox immaterjali x'kienet l-intenzjoni ta' l-artikolista jew x'kellu f'rasu meta kiteb l-artikolu jew jekk f'mohhu dik il-persuna kinitx jew le indentifikata. Hu ghal kuntrarju materjali t-test ta' l-artikolu u jekk il-qarrej ordinarju anke jekk ben informat meta jaqra l-artikolu jasalx biex jidentifika l-persuna ta' l-attur. Dana b'mod naturali u minghajr processi kumplikati ta' eliminazzjoni jew analizi xort'ohra. Dan ukoll b'certu grad ta' certezza.

Fil-kawza **Onor Angelo Farrugia vs Nicholas Cutajar et** deciza mill-Prim Awla tal-Qorti Civili fid 29 ta' Settembru 2011, intqal illi:

Biex azzjoni ta' libell bl-istampa tirnexxi, l-kitba li tkun trid tabilfors tkun marbuta ma' l-persuna tal-parti attrici, imqar jekk tkun indiretta jew "velata taht xi figura jew ohra ta' espressjoni", u dan lil hinn minn jekk il-kittieb tal-istampat kellux f'mohhu lil dik il-persuna meta kiteb dak li kiteb. Madankollu, l-fatt li persuna ma tissemmiex b'isimha f'artiklu ma jfissirx li hija mcahnda milli tmexxi 'l quddiem azzjoni ta' libell taht l-Att dwar l- Istampa, jekk kemm-il darba mill-kontenut tal-istess artiklu johrog car min kienet il-persuna li dwarha nkiteb dak li nkiteb. F'dan ir-rigward, huwa miżmum li l-identita' tal-parti malafamata tista' tingieb minn artikli ohra jew materjal iehor li jkun inkiteb u li jitfa' dawl fuq l-identita' mistura tal-persuna fl-artiklu inkriminat, imqar jekk il- materjal l-iehor ikun jikkonsisti f'kitba ohra sussegwenti tal-parti mharrka. Imma l-kejl jibqa' dejjem wiehed li l- eżercizzju jrid jitqies mill-perspettiva tal-qarrej li ghalih l-artiklu jkun maħsub;

Fil-kaz odjern, il-Qorti tirrileva ili ghalkemm l-intimat ma semmiex lir-rikorrent b'ismu, huwa jaghmel referenza ghall-artikoli ippubblikati fil-gazzetti Orizzont u iNews, u mhux biss jaghmel referenza ghalihom, izda saħansitra jaghmel 'link' ghal tali artikoli b'mod illi jekk il-qarrej tal-blog post ikun irid, ikun jista jasal direttament ghall-artikoli minnhom ippubblikati minghajr il-htiega ta' ebda tfittix ulterjuri billi jaghfas fuq tali ismijiet.

Il-Qorti tosserva illi, ghalkemm huwa minnu li l-artikolist, ossija l-intimat, ma semmiex lir-rikorrent b'ismu, il-fatt illi fil-'blog post' tieghu huwa jaghmel ness dirett ma' l-artikolu fejn jisemma ir-rikorrent u jaghmilhom accessibbli direttament ghall-pubbliku minghajr htiega ta' ebda tfittix ulterjuri ghandu jitqies bhala sufficjenti sabiex dak irrappurtat mill-artikoli gewwa l-Orizzont u iNews jitqiesu bhala formanti parti ta' l-artikolu ta' l-intimat.

Dana qieghed jinghad ghax, fl-era modera ta' llum, fejn informazzjoni hija accessibbli ghall-pubbliku b'mod facili, l-fatt illi l-intimat ghazel illi mhux biss illi jsemmi l-artikoli izda

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jagħmilhom faċilment accessibbli lill-qarrejja b'mod dirett b'semplici tghafisa fuq l-ismijiet minnu msemmija għandu jitqies bhala indikazzjoni cara illi huwa kien qiegħed jibbaza l-kumment tiegħu fuq dak hemm irrapportat u qiegħed jinkludi dak hemm kontenut fl-artikolu tiegħu stess.

Għalhekk, il-Qorti thoss illi l-argumentazzjoni ta' l-intimat illi huwa ma indirizzax kritika lejn ir-rikorrenti ma għandhiex fundament peress illi hemm ness car bejn dak minnu imsemmi u ir-rikorrent u, għalkemm l-intimat isostni illi huwa kien qiegħed jikkritika l-Gvern tal-gurnata, huwa car illi saret referenza cara għar-rikorrenti u l-post illi huwa kien jokkupa fil-mument illi giet ippubblikata l-artikolu meritu tal-kawza odjerna.

Ikkunsidrat

It-tieni linja ta' difiza ta' l-intimat kienet illi dak minnu miktub kellu jitqies bhala 'fair comment' fis-socjeta demokratika tagħna ta' llum fejn id-dritt tal-liberta' ta' l-espressjoni hija protetta.

Fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, dana il-punt kien gie dibattut fid-dettall u kien intqal is-segwenti li huwa rilevanti għad-difiza imressqa mill-intimat (sottolinear ta' dina l-Qorti).

78. The fundamental principles concerning the question whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised as follows:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for 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 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 ...

.....

79. Furthermore, the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

80. *The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.*

81. *When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the “protection of the reputation or rights of others”, the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.*

82. *The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.*

83. *The Court has considered that 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.*

Dana il-principju reggha gie ripetut fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricientement, ossija fil 21 ta' Ottubru 2014, fuq meritu simili ghal dak in ezami, fejn intqal is-segwenti:

62. *The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.*

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Fl-istess decizjoni, il-Qorti ghamlet is-segwenti osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajjma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

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-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. 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."

Il-posizzjoni dwar in-natura ta' "fair comment", li huwa principju zviluppat gewwa il-Qrati Inglizi, huwa simili ghall principju ta' "value judgment" kif zviluppa gewwa il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem.

Kif kien stqarr Lord Denning fil-kawza **London Artists Ltd v Littler** [1969] 2 QB 375, 391:

"In order to be fair, the commentator must get his basic facts right. The basic facts are those which go to the pith and substance of the matter: see Cunningham-Howie v. Dimpleby [1951] 1 KB 360,364. They are the facts on which the comments are based or from which the inferences are drawn – as distinct from the comments or inferences themselves. The commentator need not set out in his original article all the basic facts: see Kemsley v. Foot [1952] AC 345; but he must get them right and be ready to prove them to be true."

Dwar jekk id-difiza ta' "fair comment" tregix, fis-sens jekk dak illi qal l-intimat ghandhux jitqies bhala allegazzjoni ta' fatt jew "fair comment", issir referenza ghal dak illi stqarr Lord Potter f'diskors illi kien ghamel lill-House of Commons fis-sena 1952 [AC 345], fejn qal is-segwenti:

"The question, therefore, in all cases is whether there is a sufficient substratum of fact stated or indicated in the words which are the subject-matter of the action, and I find my view well expressed in the remarks contained in Odgers on Libel

and Slander, 6th Edition (1929), p 166. 'Sometimes, however,' he says, 'it is difficult to distinguish an allegation of fact from an expression of opinion. It often depends on what is stated in the rest of the article. If the defendant accurately states what some public man has really done, and then asserts that 'such conduct is disgraceful,' this is merely the expression of his opinion, his comment on the plaintiff's conduct. So, if without setting it out, he identifies the conduct on which he comments by a clear reference. In either case the defendant enables his readers to judge for themselves how far his opinion is well founded; and, therefore, what would otherwise have been an allegation of fact becomes merely a comment. But if he asserts that the plaintiff has been guilty of disgraceful conduct, and does not state what that conduct was, this is an allegation of fact for which there is no defence but privilege or truth. The same considerations apply where a defendant has drawn from certain facts an inference derogatory to the plaintiff. If he states the bare inference without the facts on which it is based, such inference will be treated as an allegation of fact. But if he sets out the fact correctly, and then gives his inference, stating it as his inference from those facts, such inference will, as a rule be deemed a comment. But even in this case the writer must be careful to state the inference as an inference, and not to assert it as a new and independent fact; otherwise, his inference will become something more than a comment, and he may be driven to justify it as an allegation of fact.'

Fil-kaz odjern, ghalkemm, ma' l-ewwel harsa, wiehed jista' jasal ghall-konkluzjoni illi dak illi l-intimat qal kien attwalment allegazzjoni ta' fatt aktar minn "fair comment", min qari fid-dettall ta' l-artikolu kollu, partikolarment ir-referenzi illi l-intimat jaghmel ghall-artikoli ippubblikati fuq l-Orizzont u l-iNews, jwasslu lill dina l-Qorti biex tikkonkludi illi, la darba l-fatti kif stabbiliti minn terzi, u li l-intimat ghamlihom tieghu meta inkludihom fl-artikolu meritu tal-kawza odjerna, gew imsemmija fl-artikolu, l-intimat kien semma l-fatti tal-kaz u kien ikkummenta dwarhom, u ghalhekk il-kummenti illi ghamel ghandhom jigu kkunsidrati bhala 'fair comment' a tenur tat-tagħlim zviluppat fil-Qrati Inglizi.

Ikkunsidrat

Stabbilit il-fatt illi l-kumment magħmul mill-intimat ghandu jitqies bhala 'fair comment' kif jghidu il-qrati Inglizi jew 'value judgment' kif tghid il-ECHR, wiehed ghalhekk irid jgharbel l-elementi tal-fair comment u jqabbilhom ma' l-artikolu meritu tal-kawza odjerna.

Fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, Lord Phillips ghamel is-segweni 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

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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.*

Abbazi ta' dana l-principji, il-Qorti thoss illi jkun opportun illi jigi ezaminati l-hames elementi imsemmija minn Lord Philips sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

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- **"the words complained of were comment"** - ma hemmx dubju illi l-kummenti illi ghamel l-intimat fl-artikolu meritu tal-kawza odjerna kien kumment u mhux allegazzjoni ta' fatt, u dana kif gia spjegat aktar 'l fuq minn dina l-Qorti.
- **"the comment was on facts"** - dwar jekk il-kumment kienx attwalment fuq fatti jew le, il-Qorti ma tistax ma tosservax illi, ghalkemm il-kummenti kienu attwalment ibbazati fuq fatti, tali fatti, madanakollu, ma kienux korretti. Anzi, tali fatti kienu totalment zbaljati. Dana qieghed jinghad peress illi jirrizulta bl-aktar mod car li Lawrence Zammit kien ilu illi rrizenja minn Direttur u Azzjonist tas-socjeta Notabile Fiduciaries Limtied u Notabile Consulting Group Limited minn l-ahhar tas-sena 2008 filwaqt illi rrizulta ukoll illi Simon Vella u s-socjetajiet fuq imsemmija kienu ilhom illi rrizenjaw minn gewwa s-socjeta Ernygium Limited, li kienet wahda mis-socjetajiet investigati mill-Pulizija Taljana u Maltija minn l-ahhar ta' Awissu 2011. Jidher ukoll ippruvat illi, a differenza ta' dak illi kien qieghed jallega l-intimat meta ghamel tieghu dak illi kien inkiteb fl-artikolu fuq l-Orizzont u l-iNews u ghadha il-kumment *"Mhux biss l-Imhallfin jixhtu d-dellijiet meta jkunu taht investigazzjoni"*, ir-rikorrent qatt ma kien taht ebda investigazzjoni, kif ikkonfermaw anke il-Pulizija Maltija meta stqarrew illi kemm ir-rikorrent u il-kumpanniji Maltin fuq imsemmija Notabile Fiduciaries Limtied u Notabile Consulting Group Limited qatt ma kienu investigati izda kienu qed jassistu lill-Pulizija f'investigazzjoni dwar kumpanniji illi kienu qed jaghmlu uzu mis-servizzi taghhom - hija haga tghid li persuna qieghda tghin fl-investigazzjonijiet, u hija haga ferm aktar serja illi tghid illi persuna qieghda tigi investigata f'kaz ta' hasil ta' flus, kif sahaq l-intimat fl-artikolu tieghu.
- **"the facts commented on constituted a matter of public interest"** - ma hemmx dubju illi l-fatt li jkun hemm investigazzjoni dwar hasil ta' flus huwa ta' interess pubbliku.
- **"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 fit-tieni kriterju, stante illi gie stabbilit li l-fatti kif indikati mill-intimat ma kienux korretti u kien jaghtu stampa inkorretta tal-kaz kollu, allura wiehed ma jistax jikkonkludi li tali kumment kien oggettivament 'fair comment', peress illi l-bazi tieghu kien monk.
- **"the comment represented the defendant's honest opinion."** - Il-Qorti ma ghandha ebda dubju illi l-intimat kien honest fil-kumment illi ghadha u li kellu ebda intenzjoni ta' hazen ossija 'malice' meta huwa ghadha tali kummenti. Kif stqarr huwa stess, bhala politiku, hass il-htiega illi jissenjala dana il-kaz u jitlob lill-Awtoritajiet kompetenti sabiex jinvestigaw halli, fi kliemu stess, *"tinkiser l-omerta' illi hawn fil-pajjiz li kollox jinzamm mistur u li l-affarjiet jigu investigati b'mod apert."*

Ikkunsidrat

Stabbilit il-fatt illi l-kumment illi ghamel l-intimat ma jistax jitqies bhala "fair comment", izda kien kumment illi kien malafamanti u libelluz fil-konfront tar-rikorrenti, il-Qorti trid tghaddi biex tikkwantifika d-danni li ghandhom jigu likwidati.

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Ghandu jigi rilevat illi, tul il-proceduri quddiem dina l-Qorti, partikolarment fit-trattazzjoni ta' l-abbli difensuri tal-partijiet, gie rilevat illi r-rikorrent kien aktar interessat milli jinghata certifikat li bih juri li huwa ma kienx investigat f'xi kaz ta' hasil ta' flus, kif gie allegat fil-konfront tieghu, u ma kienx interessat fid-danni pekunjarji.

Il-Qorti tifhem dana il-hsieb espress mir-rikorrent, partikolarment in vista tal fatt illi, f'socjeta zghira bhalma hija dik Maltija, u l-professjoni li jhaddan ir-rikorrent, huwa ferm aktar importanti illi r-reputazzjoni taghhom tigi protetta milli jinghataw kumpens finanzjarju.

Fid-dawl ta' tali sottomissjonijiet, il-Qorti thoss illi tali sottomissjonijiet huma talba lill-Qorti sabiex tapplika dak rikjest fl-Artikolu 20 tal-Kap 248, ossija rettifika fuq l-istess mezz utilizzat mill-intimat, sabiex ir-reputazzjoni tar-rikorrenti tigi protetta, u dana flok ma' tapplika d-danni stabbiliti fl-artikolu 28 tal-Kap 248 tal-Ligijiet ta' Malta.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha, kemm dokumentarji kif ukoll viva voce, prodotti quddiemha;

Wara illi semghet it-trattazzjonji ta' l-abbli difensuri tal-partijiet;

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet ta' l-intimat

Tilqa t-talba attrici u ghalhekk

Tiddikjara illi l-artikolu intitolat '*Mhux biss l-Imhallfin ...*' ippubblikat fuq is-sit elettroniku 'Blog ta' Carmel Cacopardo' fit 3 ta' Jannar 2013 huwa malafamanti u libelluz fil-konfront tar-rikorrent u

A tenur ta' l-Artikolu 20 tal-Kap 248 tal-Ligijiet ta' Malta, tordna lill-intimat sabiex, fuq l-artikolu intitolat '*Mhux biss l-Imhallfin ...*' ippubblikat fuq is-sit elettroniku 'Blog ta' Carmel Cacopardo' u vizibbli sa lllum tiddahhal retifika ghal dak li ntqal u dana billi jigi indikat illi, kif stqarrew il-Pulizija fittra esebita quddiem dina l-Qorti, "ir-rikorrent u l-kumpanniji Notabile Fiduciaries Limtied u Notabile Consulting Group Limited ma kienu qatt qed jigu investigati mill-Pulizija Maltija dwar hasil ta' flus izda kienu qed jghinu lill-Pulizija fl-investigazzjoni ta' kumpanniji terzi illi kienu qed jaghmlu uzu mis-servizzi finanzjarji offerti mill-istess rikorrenti u socjetajiet fuq imsemmija".

In vista ta' dak dikjarat mir-rikorrent waqt it-trattazzjoni kif fuq indikat, kull parti ghandha tbaghti l-ispejjez taghha.

< Sentenza Finali >

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