



MALTA

**QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.**

**FRANCESCO DEPASQUALE**

Seduta tas-16 ta' April, 2015

Avviz Numru. 5/2013

**Simon Vella**  
**(ID 215965M)**

vs

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

Il-Qorti,

Rat ir-rikors ippresentat fl-4 ta' Jannar 2013 mir-rikorrent fejn, filwaqt illi ghamel referenza ghall pubblikazzjoni ossija artikolu illi deher fil-harga ta' l-Orizzont tat-3 ta' Jannar 2013 intitolat 'L-inkjesta tal-Pulizija Taljana dwar hasil ta' eluf kbar ta' flus 'mahmugin' bejn Sqallija, Malta u l-Lussemburgu', b'titolu addizzjonali "involut ukoll ufficjal ta' TM", 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.

Ra l-artikolu meritu tal-kawza odjerna esebit mir-rikorrent.

Rat ir-risposta ta' l-intimat ippresentat fis 17 ta' Jannar 2013 fejn laqa' ghal dak lili imputat billi sahaq illi l-artikolu ma huwiex libelluz fil-konfront tal-attur peress illi kulma ghamel kien illi wassal lill-qarrejja taghrif ta' importanza pubblika fil-qadi tad-dmir tieghu li jzomm

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lill-pubbliku mgharraf b'taghrif bhal dan filwaqt illi insista illi huwa ma ivvinta xejn u ghalhekk ma huwa hati ta' ebda libel.

Semghet ix-xhieda ta' **Simon Vella** moghtija l-10 ta' Gunju 2013.

Semghet ix-xhieda ta' **Lawrence Zammit** moghtija fl-10 ta' Gunju 2013.

Rat illi fit 30 ta' Mejju 2014 sar verbal quddiem dina l-Qorti fejn il-partijiet qablu li x-xhieda migbura fil-kawza 1/13FDP, sa fejn applikabbli, ghandhom japplikaw ghal kawza odjerna.

Rat ix-xhieda u l-provi migbura fil-kawza 1/13FDP.

Semghet ix-xhieda ta' l-intimat **Owen Galea** moghtija fit-22 ta' Settembru 2014 flimkien ma dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' l-intimat **Josef Caruana** moghtija fit-22 ta' Settembru 2014.

Rat illi fl-10 ta' Novembru 2014 l-intimat iddikjara illi ma kellux aktar provi x'jippresenta.

Ra in-nota ta' sottomissjonijiet tar-rikorrent ippresentat fil 11 ta' Frar 2015.

Ra in-nota ta' sottomissjonijiet ta' l-intimata ippresentat fl-20 ta' Frar 2015.

## Ikkunsidrat

Mill-provi prodotti jirrizulta illi l-artikolu meritu tal-kawza odjerna 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-kumpannija 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.

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 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.

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Jirrizulta illi, mument minnhom fis-sena 2011, Simon Vella, li jmessi 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, Nelfracemp, 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 ma kien hemm ebda investigazzjoni fis-socjetajiet Notabile Fiducuari 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.*

*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 fix-xhieda tieghu moghtija fit 22 ta' April 2013 fil-kawza 1/13FDP, insista illi huwa hassu malafamat u ingurjat press illi il-kumpannija tieghu qatt ma kienet involuta fil-hasil ta' flus u is-socjeta qatt ma giet investigata u l-artiklu kien jallega li l-kumpannija kienet involuta fl-investigazzjonijiet.

Ir-rikorrent stqarr ukoll illi, bhala rizultat tar-rappurtagg 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, press illi huwa kien Awditur, gharrfitu illi ma kienetx intenzjonata tkompli tikkoprieh.

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

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Owen Galea, l-artikolist illi rrediga l-artikolu meritu tal-kawza odjerna, fix-xhieda tieghu, stqarr illi kienu gew ippubblikati zewgt stejjer fuq siti gurnalistici elettronici Taljani fit-12 ta' Dicembru 2012 u l-1 ta' Jannar 2013 fejn gie rappuratat illi l-kumpanija Maltija bl-isem ta' Eryngium Limited kienet qieghda tintuza ghall-hasil ta' flus u kienet investigata bhala parti minn investigazzjonijiet ta' hasil ta' aktar minn tmien mija u hamsin elf Euro.

Galea stqarr illi malli sar jaf bl-istorja, huwa pproceda sabiex jaghmel l-istharrig tieghu dwar l-istess socjeta Eryngium Limited ma' l-MFSA, fejn irrizulta illi s-socjeta Notabile Fiduciaries Limited kellha sehem fil-kumpanija flimkien ma' socjeta ohra, bl-isem Eryngium Holdings Limited, filwaqt illi s-socjeta Notabile Consulting Group Limited kienet l-unika direttur tal-kumpanija. Irrizultalu wkoll illi r-rikorrent kien l-unika azzjonist tas-socjeta Notabile Fiduciaries Limited, kif ukoll illi, flimkien ma' Lawrence Zammit, kien direttur ta' l-istess socjeta.

Galea stqarr illi hekk kif ottjena tali informazzjoni, huwa ikkomunika ma' Lawrence Zammit u giet ippubblikata storja fit-2 ta' Jannar 2013 meritu tal-kawza 1/15 FDP, li sussegwentement kienet tranzatta. Sussegwentement, kien gie ikkuntattjat ir-rikorrent ghall-kumment izda ghazel illi ma jaghti ebda kumment. Madanakollu, sussegwentement u qabel ma gie ippubblikat l-artikolu meritu tal-kawza odjerna, ir-rikorrent baghat ittra spjegattiva lill-intimati.

Galea sahaq illi ir-risposta moghtija mir-rikorrent giet ippubblikata in intjier izda insista li peress li r-rikorrent kellu kariga ufficjali fi hdan it-Transport Malta, kien fl-interess tal-pubbliku illi l-istorja bil-kummenti tar-rikorrent tigi ippubblikata.

### Ikkunsidrat

Mill-provi prodotti quddiem dina l-Qorti u min-noti ta' sottomissjonijiet eruditi ta' l-abbli difensuri tal-partijiet, jirrizulta illi l-kaz kollu jibbaza ruhu fuq id-dritt tal-gurnalist illi jikteb l-artikolu bl-informazzjoni illi kien hemm miktub, u ghalhekk ikun utili illi dina l-Qorti tezamina ftit fid-dettall l-izvilupp illi sehh tul is-snin li ghaddeu fil-kamp Ewropew, sabiex il-principji hemm stabbiliti, u gia mhaddna minn dawna l-Qrati, jigu kkunsidrati u ri-affermati mill-Qrati taghna.

Fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, il-Qorti ghamlet referenza ghall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li ghandu jitlahaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tieghu protetta.

Dwar il-principji generali tal-liberta' ta' l-espressjoni, l-istess Qorti qalet is-segweni:

78. *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, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.*

Dwar ir-rwol importanti li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli tghid:

79. *The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".*

80. *This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)*

81. *Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.*

Ir-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandha tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, tghid hekk:

82. *However, Article 10 § 2 of the Convention states that freedom of expression carries with it "duties and responsibilities", which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance 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*

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*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.*

Tenut kont ta' dawna l-fatti, il-Qorti ghandha tassikura illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem niedet sitt kriterji importanti sabiex jigi assikurat illi, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*". Dawna l-kriterji kif stabbiliti huwa s-segwent:

### ***(a) Contribution to a debate of general interest***

*90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest*

### ***(b) How well known is the person concerned and what is the subject of the report?***

*91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.*

*Whilst in the former case the press exercises its role of "public watchdog" in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public's right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.*

### ***(c) Prior conduct of the person concerned***

92. *The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.*

***(d) Method of obtaining the information and its veracity***

93. *The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that 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 and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism.*

***(e) Content, form and consequences of the publication***

94. *The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.*

***(f) Severity of the sanction imposed***

95. *Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.*

Kif intqal fis-sentenza **Ligens vs Austria**, u abbraccjata 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.*

Tali skrutinju, madanakollu, ma giex limitat biss ghall-politici, u, di fatti, fil-kawza **Novaya Gazeta Voronezhe vs Russia** deciza fl-20 ta' Gunju 2011, is-segweni persuni tqisu illi huma soggetti ghal skrutinju oghla minn persuna privata, ghalkemm f'livelli differenti, meta qalet:

"44. .... The Court reiterates that a politician acting in his public capacity inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large.

45. ... The Court notes that civil servants acting in an official capacity are, similarly to politicians albeit not to the same extent, subject to wider limits of acceptable criticism than a private individual.

46. ... The Court points out that private individuals lay themselves open to scrutiny when they enter the public arena and considers that the issue of the proper use of public funds is undoubtedly a matter for open public discussion.

Fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, il-liberta' ta' l-espressjoni invokata mill-intimat kien gie dibattut fid-dettall u kien intqal is-segwenti li huwa rilevanti ghad-difiza imressqa mill-intimat (sottolinar 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.

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:

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*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."*

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Dina il-Qorti, abbazi tat-tghalim fuq indikat kif ukoll wara illi semghet ix-xhieda kollha tal-partijiet, ghaddiet biex tifli fid-dettall l-artikolu meritu tal-kawza odjerna.

Jirrizulta illi f'tali artikolu, l-artikolist jghaddi biex jaghmel elenku tal-fatti kollha illi kiengie stabbili dwar il-fatt li s-socjeta Eryngium Limited kienet qed tigi investigata mill-Pulizjija taljana ghal hasil ta' flus filwaqt illi qalet illi s-socjeta Notabile Fiduciaries Limited, illi fiha ir-rikorrent kien shareholder, kienet azzjonista ta' Eryngium. Imkien ma jintqal illi s-socjeta Notabile Fiduciaries Limited u/jew ir-rikorrent ma kienu qed jigu investigati.

Jirrizulta illi l-istess artikolu, jirrapurta verbatim ir-risposta twila u dettaljata illi ghamel l-istess rikorrent, liema risposta giet riprodotta ezatt kif intbghatet mir-rikorrent.

Jirrizulta illi l-artikolist, tul l-artikolu kollu, imkien ma jaghmel xi kumment izd akull ma jaghmel, tul l-artikolu kollu, huwa rappurtagg tal-fatti illi huwa rnexxilu jottjeni mill-istharrig illi huwa kien ghamel, kemm ma' l-awtoritajiet kompetenti kif ukoll ma' persuni involuti fil-kaz u Ufficji ta' Ministri illi tahthom il-kariga ufficjali illi kellu r-rikorrent kienet taqa.

Jirrizulta bl-aktar mod car, illi l-artikolu huwa rizultat ta' investigazzjoni dettaljata da' parte ta' l-artikolist Owen Galea, fejn ma sar ebda kumment izda biss rappurtagg ta' fatti, liema rappurtagg huwa rizultat ta' gurnalizmu serju w investigattiv illi dina l-Qorti kif komposta, kif ukoll il-Qorti ta' l-Appell, jisthoqq illi jigu protetti ghall-ahjar tas-socjeta ta' llum illi jisthoqqilha illi tigi assikurata illi dak irrappurtat korrettement jigi protett filwaqt illi dak li jigi rrapurtat b'mod qarrieqi jigi hekk punit sabiex ma jirrepetix ruhu.

## Kopja Informali ta' Sentenza

Kif kellha l-opportunita' tghid dina l-Qorti fil-kawza '**Carmelo Foca vs Steve Mallia et**' deciza fil 11 ta' Marzu 2015,

*“Tali gurnalizmu huwa ezempju car tal-funzjoni essenzjali illi l-mezzi tax-xandir ghandhom ikollhom bhala ‘public watchdog’ biex jiprotegu l-interessi tal-pubbliku in general, u l-Qorti ghandha d-dmir illi tiprotegi tali tip ta’ gurnalizmu peress illi hija necessarja ghal socjeta demokratika bhalma hija dik Maltija.”*

### **Konkluzjoni**

Il-Qorti

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

Wara illi rat in-nota ta' sottomissjonjiet ta' l-abbli difensuri tal-partijiet;

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tilqa** l-eccezzjonjiet ta' l-intimat u ghalhekk

**Tichad** it-talba attrici.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku tar-rikorrent

## < Sentenza Finali >

-----TMIEM-----