QORTI TA' L-APPELL

(SEDE INFERJURI)

IMHALLEF

ONOR. EDWINA GRIMA LL.D.

Seduta tat-30 ta' Settembru 2015

Rikors Numru: 79/2008

DR. PETER FENECH (ID67468(M))

Vs

FELIX AGIUS(ID340048(M)), bhala editor tal-gurnal Kulhadd, u ALEANDER BALZAN (586485(M))

Il-Qorti,

Rat is-sentenza tal-21 ta' Ottubru 2013, fejn il-Qorti tal-Magistrati (Malta) ippronunzjat is-segwenti sentenza fl-ismijiet premessi:-

"Il-Qorti,

Rat ir-rikors promotur ippresentat fil 25 ta' Frar 2008 fejn ir-rikorrent talab lill-Qorti tiddikjarat illi artikolu ippubblikat fl-ewwel u l-ahhar faccata tal-gazzetta ***Kullhadd*** *fl-24 ta' Frar 2008 intitolat "Hafirlu Dejn ta' €256,217" minn Aleander Balzan u Felix Agius, illi dak iz-zmien kien editur ta' l-istess gazzetta, huwa libelluz u malafamanti fil-konfront tar-rikorrent peress illi jikkontjeni fatti foloz u ghalhekk talab lill-Qorti tikkundannahom ihallsu lir-rikorrent danni li tistabilixxi dina l-Qorti.*

Rat ir-risposta tal-intimati ippresentata fil 25 ta' Marzu 2008 fejn, filwaqt illi eccpixxew illi r-rikorrent kellu jipprova lill-Qorti illi Agius kien l-editur tal-Gazzetta, sahqu illi dak minnhom miktub kieb ibbazat fuq il-vertita tal-fatti u ghalhekk jikkostitwixxi "fair comment" u ghalhekk ma kellux ikun meqjus bhala libelluz.

Rat id-dokument ippresentat fis 17 ta' Gunju 2008 fejn il- Press Registrar tad-Dipartiment ta' l-Informazzjoni ikkonferma illi Felix Agius kien l-editur tal-gazzetta KullHadd fl 24 ta' Frar 2008.

Rat l-affidavit tar-rikorrent ***Dr Peter Fenech*** *ippresentat fis 17 ta' Gunju 2008 flimkien ma dokumentazzjoni maghha annessa.*

Rat illi fis 17 ta' Gunju 2008, ir-rikorrent iddikjara illi kien qed jaghlaq il-provi.

Rat illi bejn is 27 ta' Jannar 2009 sal 10 ta' Dicembru 2012, saru tmintax-il seduta fejn l-intimat jew ma deherx, jew ma ressaqx il-provi jew inkella qal illi kien qieghed jipprova jittransigi l-kawza.

Rat illi, eventwalment, meta l-intimat gharraf il-Qorti li ma wasalx ghal transazzjoni, fl-10 ta' Dicembru 2012 xehed ***Felix Agius****, bhala editur tal-gazzetta KullHadd, liema xhieda instemghet minn dina l-Qorti kif ppresjeduta.*

Semghet ix-xhieda ta' ***Aleander Balzan*** *moghtija fl-20 ta' Mejju 2013.*

Rat illi fil 5 ta' Lulju 2013, il-kawza kienet differita ghat-trattazzjoni, ghal liema seduta la l-intimati u lanqas il-konsulent taghhom ma deherx u ghalhekk il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

*Illi l-kawza odjerna tirrigwarda artikolu illi gie ippubblikat fl-24 ta' Frar 2008 fil-harga tal-Hadd tal-gazzetta KullHadd li fiha, fil-faccata, tidher kaxxa li fiha hemm ritratt ta' Dr Lawrence Gonzi dahqani u, fl-isfond tieghu hemm ritratt iehor tar-rikorrent Dr Peter Fenech, filwaqt illi hdejn dawna z-zewgt ritratti imqieghda hdejn xulxin hemm il-kliem "**Hafirlu dejn ta' €256,217**" u hemm referenza ghal pagna ta' wara tal-gazzetta fejn l-artikolu huwa riprodott. Imbghad, fil-pagna ta' wara ta' l-istess gazzetta, reggha hemm ritratt ta' Dr Lawrence Gonzi dahqani u fl-isfond tieghu hemm ritratt tar-rikorrent Dr Peter Fenech u dana taht titolu "**Jinhafirlu dejn kbir li kellu mal-Gvern**" imbghad fuq il-gemb hemm l-istorja kollha kif rappurtata mill-intimat Aleander Balzan.*

Illi l-istorja, in succint, tghid li kumpannija tar-rikorrent, ossija VAB & Company Limited, illi fiha r-rikorrent kien direttur flimkien ma' missieru, kienet kriet fond gewwa Tas-Sliema bl-isem ta' Jumbo Lido, ghal liema fond hija kienet naqqset illi thallas il-kirjiet, li kien jammontaw ghal €256,217 (Lm109,965). Wara xi zmien, din il-kumpannija kienet terminat il-kuntratt ta' kera u kienu gew lilha mahfura il-kirjiet li kellha thallas b'lura.

L-istorja imbghad tkompli tghid illi dana il-fatt sehh ftit zmien wara illi Dr Lawrence Gonzi, dak iz-zmien Prim Ministru, kien ha id-dikasteru tal-Ministeru tal-Finanzi ukoll. L-istorja, infatti, tghid illi r-rikorrent kien "alleat kbir tal-Partit Nazzjonalista" u kien inghata diversi karigi mill-gvern, fosthom Chairman tat-Teatru Manoel u ta' Dar il-Mediterran. L-istorja tghid ukoll illi mart ir-rikorrent, ossija Roberta Messina, kienet hi ukoll inghatat hatriet simili, fosthom Chairperson tal-Occupational Healt and Safety Authority

Ikkunsidrat

Mix-xhieda illi ta' ir-rikorrent permezz ta' affidavit, jirrizulta illi huwa kien qed jilmenta, partikolarment, ghal fatti kif prodotti meta intqal is-segwenti:

Il-qbil sar bejn il-kumpannija ta' Fenech u l-Kummissarju ta' l-Artijiet li kien qed jagixxi f'isem il-Gvern.

Kien b'rizultat ta' dan il-ftehim li l-Gvern hafer id-dejn kollu li l-kumpannija ta' Fenech kellha ma' l-Istat, fejn li kien jlahhaq l-ammont ta' €256,217.

....

Kollox irregolarizza ruhu meta ftit aktar minn sena wara li Lawrence Gonzi ha t-tmexxija tal-Ministeru tal-Finanzi f'idejh, id-dejn kollu tal-kumpannija ta' Fenech inhafer.

Ir-rikorrent jishaq illi qatt ma kien inhafirlu xi dejn lilu personali jew lil xi kumpannija tieghu u ghalhekk ma kienx minnu illi kien inhafirlu xi dejn. Huwa jishaq ukoll illi l-kumpannija VAB & Company Limited ma hijex kumpannija tieghu izda huwa biss Direttur fiha u azzjonist ta' sehem wiehed minn eluf ta' ishma f'kumpannija illi ghadha terz tal-kumpannija VAB, ossija Franks Holdings Limited, illi hija kumpannija ta' missieru.

Dwar il-fatti tal-kaz, ir-rikorrent jistqarr illi s-socjeta VAB kienet inghatat 'beach concession' gewwa Tigne biex din tigi zviluppata u hemm kien sar il-post maghruf bhala Jumbo Lido. Fis-sena 2005, il-Gvern tal-gurnata kien xtaq jirrixxindi tali kirja minhabba f'progett illi kellu u ghalhekk kien talab lill-istess socjeta VAB tiddikjara jekk kienetx disposta li tirrixxindi l-kuntratt taghha ghaxar snin qabel iz-zmien. Il-kumpannija VAB wriet id-disponibbilta' taghha ghal tali talba bil-kundizzjoni illi l-Gvern ma jinistix fuq il-gbir tal-kera dovuta b'lura, u dana bhala kumpens tat-terminazzjoni bikrija tal-koncessjoni. Wara

illi kien intlahaq ftehim, fit 3 ta' Ottubru 2005 gie iffirmat il-ftehim illi fih ir-rikorrent ma kienx firmatarju.

Ir-rikorrent jikkontendi illi l-artikolu, kif miktub, sar sabiex jattakaw il-Gvern bih, peress illi huwa kien habib ta' Dr Louis Galea, illi kien Ministru tal-Gvern ghal ftit zmien, u, kif jghid ir-rikorrent "ghazlu konxjament li juzaw lili sabeix jippruvaw inisgu konnessjoni politika bhala raguni ghall-ftehim kif ukoll semblanza ta' pjaciri u skandli politici".

Felix Agius, da parte tieghu, stqarr illi bhala editur tal-gurnal, huwa dejjem jghid lill-gurnalisti illi kellu "biex jistudjaw l-istorja bir-reqqa u johorgu kemm jista jkun informazzjoni izda mhux ncessarjament l-istorja kollha u dan ghax ma jkunx jista jiccekkja l-informazzjoni kollha." Dwar il-kontenut ta' l-istorja, huwa stqarr illi dak ihalli f'idejn l-artikolist ghalkemm eventwalment huwa japprova l-artikolu qabel ma jigi ppubblikat.

Aleander Balzan, fix-xhieda tieghu, stqarr illi sors li huwa kellu fil-Ministeru tal-Finanzi urieh dokument fejn is-socjeta VAB kien inhafrilha ammont sostanzjali ta' flus mill-Gvern, u dana l-istess sors kien tah il-konnessjoni bejn is-socjeta VAB u ir-rikorrent. Huwa stqarr illi, minn stharrig illi kien ghamel, irrizultalu li r-rikorrent kellu ishma fil-kumpannija VAB u irrizultalu wkoll illi kellu interess fil-kumpannija peress illi kien direttur taghha u kien ghalhekk illi huwa indikaha bhala "il-kumpannija ta' Peter Fenech". Huwa stqarr ukoll illi ma kienetx relevanti ghalih illi s-socjeta VAB cediet xi drittijiet taghha peress illi il-punt kollu kien li l-kumpannija kellha taghti l-flus u dawna gew lilha mahfura. Balzan imbghad stqarr illi r-rikorrent kien involut sew fil-Partit Nazzjonalista u kien ghalhekk illi indikah bhala "alleat kbir tal-Partit Nazzjonalista."

Ikkunsidrat

Illi, fid-difiza tal-intimati, ghajr ghal eccezzjoni procedurali li giet solvuta bid-dokument tad-Dipartiment ta' l-Informazzjoni, il-bazi tad-difiza taghhom kienet il-verita' tal-fatti u l-'fair comment'.

Dwar in-natura tal-'fair comment', hemm volumi ta' kitbiet dwarha, kemm minn awturi kif ukoll minn Qrati. Ghalhekk, dwar x'jista jitqies bhala 'fair comment' jew 'honest comment' kif gie recentement deskritt minn Qrati Inglizi, dana gie ben stabbilit, ghalkemm b'mod soggettiv f'xi okkazzjonijiet. Manadakollu, ikun opportun illi isir referenza ghal xi principji kif enuncjati minn awturi u Qrati sabiex terggha tigi mfakkra in-natura tal-'fair comment'.

Fl-ktieb **Gatley on Libel and Slander** *(Sweet & Maxwell (London), 1981 dana l-awtur jghid illi in-natura ta' kumment ghandha tkun:*

... 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).

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

"The civil law of libel is primarily concerned to provide redress for those who are the subject of false and defamatory factual publications. Thus in the simplest case A will be entitled to relief against B if B publishes a defamatory factual statement concerning A which B cannot show to be true. The law is not

primarily concerned to provide redress for those who are the subject of disparaging expressions of opinion, and freedom of opinion is (subject to necessary restrictions) a basic democratic right. It is, however, plain that certain statements which might on their face appear to be expressions of opinion (as where, for example, a person is described as untrustworthy, unprincipled, lascivious or cruel) contain within themselves defamatory suggestions of a factual nature. Thus the law has developed the rule already mentioned that comment may only be defended as fair if it is comment on facts (meaning true facts) stated or sufficiently indicated. Failing that, the comment itself must be justified."

Recentement, fil-kawza **Spiller vs Joseph** *deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, Lord Phillips ghamel is-segwenti konsiderazzjonijiet u ezami tal-legislazzjoni kemm Ingliza kif ukoll tal-Qorti ta' Strasbourg interessanti hafna 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.

L-istess Lord Phillips imbghad ezami l-posizzjoni mehudha mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem, u 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

L-intimati, fid-difiza taghhom iressqa zewgt argumenti differenti ghalkemm relatati, ossija il-verita' tal-fatti, maghrufa ukoll bhala "statement of facts" kif ukoll "fair comment", li hija ukoll il-'value judgment'.

Dwar l-ewwel difiza, ossija 'statement of fact', jirrizulta ben ippruvat illi bhala fatti, dak kollu illi attwalment sehh kif indikat u spjegat mir-rikorrent kien imsemmi fl-artikolu, u ghalhekk, ghalkemm l-artikolista kien certament ekonomiku hafna fid-dettalji illi ta' lill-qarrejja, wiehed seta jifhem, wara li jgharbel l-innuendos kollha illi saru fl-artikolu, li l-ammont dovut kien pacjut mal-fatt illi l-kirja kienet ser tigi ceduta qabel iz-zmien. Ghalhekk, bhala fatti, jidher illi b'xi mod jew iehor, dawna gew ikkonunsidrati.

Madanakollu, dina d-difiza wahedha ma hijiex ser tregi, u dana ghax fl-artikolu, apparti fatti imsemija, hemm hafna kummenti ta' l-artikolist illi taghhom l-intimati qed jghidu li huma 'fair comment', liema kummenti saru flimkien mal-fatti indikati b'mod illi wiehed ma jistax jikkonsidra l-eccezzjoni ta' 'statement of fact' minghajr ma jikkonsidra dik ta' 'fair comment'.

F'dana l-istadju, ghalhekk, il-Qorti thoss illi jkun 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" - ma hemmx dubju illi l-kliem li intuzaw mill-artikolist tul l-artikolu kollu, salv ghar-rakkont tal-fatti, kienu kumment dwar dak li kien sehh tlett snin qabel fejn ammont dovut kien "inhafer" lis-socjeta VAB & Company Limited.*

(ii) *"the comment was on facts" - jidher, mill-fatti kif prodotti, illi l-kumment illi kien qed isir kien bbazat fuq il-fatt illi l-kumpannija VAB & Company Limited kellha taghti somma flus lill Gvern ta' Malta, liema somma flus eventwalment il-Gvern ma gabarx peress illi, minflok, huwa ha lura l-pussess tal-fond minnu koncess ghal hansa u ghoxrin sena, ghaxar snin qabel suppost. Fl-artikolu, imbghad, jinghad illi r-rikorrent huwa vicin tal-Partit Nazzjonalista u li kemm hu kif ukoll il-mara tieghu inghataw diversi inkarigi mill-Gvern tal-gurnata. Jirrizulta illi huwa minnu li r-rikorrent huwa vicin tal-Partit Nazzjonalista u li kemm hu kif ukoll il-mara kellhom inkarigi lilhom moghtija. Li certament ma jirrizultax mill-fatti kif ippruvati hija li ir-rikorrent, kif sahaq l-artikolist fit-titolu ta' l-artikolu, inhafrulu xi flus illi huwa kellu jaghti lill-Gvern. Irrizulta, anzi mill-provi kif prodotti illi ir-rikorrent personalment ma kellu jaghti ebda flus lill-Gvern u il-kumpannija VAB, li l-artikolist jishaq li hija kumpannija tar-rikorrent, hija attwalment kumpannija li ghandha tlett azzjonisti, li l-ebda minnhom ma huwa ir-rikorrent, u wahda mill-azzjonisti hija l-kumpannija ta' missier ir-rikorrent li fiha ir-rikorrent ghandu sehem wiehed minn hames mija.*

(iii) *"the facts commented on constituted a matter of public interest" - ma hemmx dubju illi l-fatt li ammont dovut lill-Gvern ma' jithallasx huwa, minnu innifisu, tikkostitwixxi kwistjoni ta' interess pubbliku. Madanakollu, il-Qorti ma tistax ma tinnutax illi tali interess huwa kondizzjonat bl-elementi taz-zmien u*

tar-rilevanza tal-kwistjoni. Dana qieghed jinghad ghax jirrizulta ben ippruvat illi l-fatti li wasslu ghall-istorja tal-artikolist kienu fatti li sehhew tlett snin qabel ma giet irrapportata u, aktar importanti, tali rappurtagg sar fi zmien l-elezzjoni tas-sena 2008 illi kienet, attwalment, sehhet ftit gimghat wara il-pubblikazzjoni ta' tali artikolu. Mill-banda l-ohra, hareg car mill-provi li tali allegat "tahfir" ta' flejjes dovuti ma kienx azzjoni unilaterali da' parte tal-Gvern izda kien kontro-skambjat b'azzjoni simili da' parte tas-socjeta VAB Limited fejn dina cediet dritt illi hija kellha ghall ghaxar snin. Ghalhekk, ir-rilevanza ta' l-istorja tiehu xejra ohra, ghax hawn ma ghandhniex kaz fejn Gvern unilateralment "hafer" xi flejejs dovuti, izda kien kaz ta' negozjati ta' natura kummercjali li saru bejn zewgt partijiet li kellhom rabta bejniethom, liema negozjati waslu ghal soluzzjoni illi tqieset bhala ekwa ghat-tnejn li huma. Allura, ma kienx kaz li kellu jwassal ghal tant pubblicita', kif attwalment gara.

(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;" - kif gia indikat aktar il-fuq, deher car illi l-kummenti kif maghmulha ma kienux oggettivament "fair" u certament mhux onesti peress illi hareg car li, a differenza ta' dak allegat mill-artikolist bi kliem kbar fuq il-faccata tal-gazzetta u fil-pagna ta' wara, ma kienx minnu illi lir-rikorrent inhafrulu xi djun illi kellu jaghti. Ghalkemm il-fatti kollha issemmew, ghalkemm b'mod ekonomiku ghall-ahhar, il-mod kif tali fatti gew konnessi u il-kummenti li intuzaw sabiex jallaccjaw il-fatti kollha flimkien huma indikazzjoni cara li l-kumment ma kienx oggettivament wiehed "fair" fil-konfront tar-rikorrent, u kien jidher car li l-istorja kienet qed tintuza sabiex jigi attakat il-Gvern tal-gurnata ftit gimghat qabel l-elezzjoni generali tas-sena 2008 u dana a dannu tar-rikorrent illi, kien jghid lill-Gvern dak iz-zmien in gurnata, izda certament ma kellu ebda flus minnu dovuti lill-Gvern mahfura, kif qieghed jallega l-artikolist.*

(v) *"the comment represented the defendant's honest opinion." - Kif sahqu 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. Madanakollu, din il-Qorti ma tistax ma tasalx ghal konkluzjoni illi fil-mod kif gie redatt l-artikolu, kien hemm malizia da parte tal-artikolista, peress illi huwa ghaqqad flimkien fatti ma' kummenti tieghu biex ta' stampa qarrieqa lill-qarrejja li certament tefghet dell ikrah fuq ir-rikorrent.*

Kif stqarr Lord Nichols fil-kawza **Cheng** *[2001] EMLR 777*

"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 interst 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."

Ikkunsidrat

Il-Qorti thoss illi f'dana l-istadju, ghandha taghmel referenza ghad-doveri tal-gurnalisti kif enuncjati minn gurisprudenza kostanti u ghal dan il-ghan taghmel referenza ghas-sentenza moghtija, fil-kawza ***Caruana v. Mifsud****, deciza fl-24 ta' Settembru 2004, fejn intqal:*

"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)

Id-dover tal-gurnalist huwa li jghid il-fatti kollha kif inhuma b'mod illi l-qarrej ordinarju ikun jista jasal ghal konkluzjoni imparzjali u gusta tal-fatti kollha - hareg car mill-qari ta' l-artikolu, illi l-artikolist fil-kaz in ezami, naqas minn tali carezza, liema haga forsi kien dovut ghall-fatt illi dik kienet ix-xahar ta' l-elezzjoni u ghalhekk kullhadd ikun ikkargat sabiex jaghti spinta lill-partit illi mieghu ghandu affinita a spejjez tal-partiti l-ohrajn.

Il-Qorti thoss li ghandha tirrafferma li l-gurnalist ghandu dritt illi jikkummenta dwar it-twemmin tieghu, izda ghandu id-dover jassikura li tali dritt ma jimpngix fir-rappurtagg ta' fatti da' parte tieghu, ghax il-gurnalist ghandu id-dover li jinforma lill-qarrejja b'mod korrett u leali lejhom u lejn kull minn huwa involut fl-istorja li huwa qed jirrapporta.

Ikkunsidrat

Il-Qorti, qabel ma tghaddi ghas-sentenza, ma tistax ma tikkummentax dwar id-dilugar inutili u esagerat da' parte tal-intimat sabiex jippresenta l-provi tieghu fil-kawza. Kif jidher mill-inkartament kollu, f'zewgt seduti, ir-rikorrent ressaq u ghalaq il-provi tieghu, filwaqt illi l-intimat kellu ghoxrin seduta sabiex iressaq il-provi tieghu, illi kienu ikkaratterizzati minn madwar tmintax-il seduta fejn jew ma deherx hu jew inkella ghad jitlob differiment sabiex jipprova jittransigi l-kaz.

Il-Qorti ma tistax ma tesprimix id-disappunt kbir taghha lejn il-mod legger u zleali illi tali differiment kienu qed jintalbu, u tinnota illi dana huwa ta' dannu kbir ghas-sistema gudizzjarja u l-efficjenza taghha, peress illi kull ma kien qieghed jaghmel l-intimat kien illi jcahhad lir-rikorrent id-dritt illi jinghata gustizzja fi zmien qasir.

Din il-Qorti ma' tittollerax tali agir dispreggjattiv da' parte tal-intimati u l-konsulenti legali taghhom lejn l-amministrazzjoni tal-gustizzja u, filwaqt illi tirriserva li tipprovdi dwar l-konsulenti legali fi fora ohra jekk ikun il-kaz, hija ser tippenalizza tali agir da' parte tal-intimati u min mexxihom.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u semghet lix-xhieda tal-partijiet

***Tghaddi** biex taqta u tiddeciedi billi*

***Tichad** l-eccezzjonijiet kollha ta' l-intimati u*

***Tilqa** it-talbiet attrici u ghalhekk tiddikjara illi l-artikolu intitolat 'Hafirlu Dejn ta' €256,217' ippubblikat fil-harga tal-gazzetta KullHadd ta' l-24 ta' Frar 2008 kien libelluz u malafamanti fil-konfront tar-rikorrent, u ghalhekk **Tikkundanna** lill-intimati, in solidum, sabiex, a tenur tal-Artikolu 28 tal-Kap 248 tal-Ligijiet*

ta' Malta, ihallsu lir-rikorrent in linea ta' danni is-somma ta' elfejn u hames mitt Euro (€2,500).

***Tikkundanna** ukoll, a tenur ta' l-artikolu 10 (1) ta' l-Iskeda A, Tariffa A tal-Kap 12 tal-Ligijiet ta' Malta tikkundanna lill-intimati in solidum ihallsu lir-Registratur tal-Qorti is-somma ta' elf u tmien mitt Euro (€1,800) in vista tal-fatt illi l-intimati tawlu l-kaz inutilment u minghajr ebda bzonn.*

Spejjez kollha tal-proceduri odjerni ikunu a kariku tal-intimati in solidum."

Bl-appell minnhom introdott, l-appellanti Felix Agius u Aleander Balzan iressqu l-impunjattiva taghhom limitatement ghal dik il-parti tas-sentenza appellata fejn huma gew ikkundannati ihallsu *in solidum* bejniethom is-somma ta' €1800 lir-Registratur tal-Qorti u dan a tenur ta'l-Artikolu 10(1) tal-Iskeda A, Tariffa A tal-Kap.12 tal-Ligijiet ta' Malta. Dan ghaliex jishqu illi ghad illi hu minnu illi l-proceduri ittawlu aktar milli mehtieg dan ma sehhx biss b'htija imputabbli lill-appellanti. Dan ghaliex l-ewwel fazi tal-proceduri iddilungat ghal iktar minn tlett snin u dan sakemm l-atturi ghalqu mill-provi taghhom u innottifikaw lill-istess intimati appellanti bil-provi prodotti u bid-data tas-smigh tal-kawza li kienet giet assenjata lill-gudikant iehor fil-mori taghha. Wara dan l-appellanti kienu bdew b'tentattivi ghal patteggjament, izda dawn fallew u dan mhux b'xi nuqqas imputabbli solament lill-appellanti. Ghladaqstant ma jissussistux l-elementi rikjesti mil-ligi sabiex jiggustifikaw l-applikazzjoni ta'l-artikolu 10(1) tal-Iskeda A, Tariffa A tal-Kapitolu 12 tal-Ligijiet ta' Malta.

Illi fir-risposta tieghu ghal dan l-appell ir-rikorrenti appellat irrimetta ruhu ghad-decizjoni ta' din il-Qorti u dana billi l-appell intavolat ma jolqotx il-mertu tal-kaz, izda biss il-multa inflitta fuq l-appellanti.

Illi l-artikolu 10(1) tal-iskeda A, Tariffa A tal-Kapitolu 12 tal-Ligijiet ta' Malta jipprovdi illi:

"Il-Qorti tista', meta tagħti s-sentenza, tordna li l-attur jew l-konvenut f'kawża jħallas spejjeż addizzjonali lir-Reġistratur tal-Qrati f'ammont ta' mhux anqas minn €500 u mhux iżjed minn €3,000, jekk il-Qorti jidhrilha li l-att tal-proċedura li bih inbdiet il-kawża jew l-att tal-proċedura b'risposta kienu fiergħa jew vessatorji, jew li xi waħda mill-partijiet tkun tawlet il-proċeduri mingħajr bżonn, u f'dan il-każ din is-somma ma tkunx tista' tintalab lura mill-parti l-oħra."

Illi din is-sanzjoni fid-dritt proceduralі civili dahhlet fis-sehh permezz ta'l-Avviz Legali 142 tas-sena 2000, kif sussegwentement emendata, fejn fl-introduzzjoni taghha kien anke vjetat id-dritt ta'appell minn tali decizjoni tal-Qorti fejn tigi inflitta il-multa. Illi din id-disposizzjoni tal-ligi izda issubiet xi varjazzjonijiet sa recentement meta l-ammont tal-multa gie mizjud u anke id-divjet ta' appell gie gustament rimoss. Illi tali sanzjoni hija imhollija fid-diskrezzjoni tal-Qorti meta jidhrilha, bhal fil-kaz odjern, illi xi parti tkun tawwlet il-proceduri bla bzonn. Illi l-Ewwel Qorti fid-decizjoni taghha dehrilha illi filwaqt illi r-rikorrenti ressaq il-provi kollha tieghu f'zewg seduti, l-intimati damu 'il fuq minn ghoxrin seduta sabiex jibdew iressqu il-provi taghhom u ta' dan huma gew iccensurati.

Issa minn ezami ta'l-istruttorja jirrizulta illi il-kawza ghaddiet minn taht idejn tlett gudikanti separati. Illi fis-seduta tas-17 ta' Gunju 2008 meta il-kawza kienet ghadha ippresjeduta mill-Magistrat (illum Imhallef) Michael Mallia ir-rikorrenti ressaq il-provi kollha tieghu u dak in-nhar gew iffissati tlett seduti ghal gbir tal-provi tal-konvenuti. Illi f'dawn it-tlett seduti izda ma sar xejn tnejn minnhom bi htija tal-intimati appellanti. Illi fl-14 ta' Jannar 2010 l-kawza giet assenjata lill-Magistrat (illum Imhallef Silvio Meli) fejn ghat-tlett seduti ta' wara l-intimati baqghu ma dehrux u ma ressqux il-provi taghhom tant illi fis-

seduta tas-27 ta' Ottubru 2010, minhabba f'dan in-nuqqas, l-Ewwel Qorti halliet il-kawza ghas-sentenza, izda imbaghad issospendiet il-prolazzjoni tas-sentenza billi mill-atti ma irrizultax illi il-partijiet kienu taw il-kunsens taghhom sabiex il-provi migbura mill-Qorti kif diversament ippresjeduta kellhom jibqghu ighoddu. Illi fis-seduta tal-10 ta' Gunju 2011 imbaghad il-kawza giet assenjeta lill-Magistrat Francesco Depasquale u dan billi l-Magistrat Meli kien gie elevat ghal kariga ta' Imhallef fil-Qrati Superjuri. Dak in-nhar l-intimati taw rwiehom b'notifikati bil-bdil li sehh u fejn l-intimati gew ukoll notifikati bil-provi tar-rikorrenti appellat. Illi wara dan, u cioe mis-seduta tal-24 ta' Ottubru 2011, jidher illi l-intimati appellanti tallbu sensiela ta' differimenti uhud minnhom bl-iskuza illi kienet qed tigi esplorata possibbilta ta transazzjoni li giet smentita mir-rikorrenti appellat fis-seduta tat-23 ta' April 2012. Fis-seduta tat-12 ta' Lulju 2012 il-Qorti giet infurmata illi t-transazzjoni ma sehhitx u il-kawza giet differita ghal provi ta'l-intimat. Fil-fatt dawn il-provi instemghu fiz-zewg seduti ta' wara u l-kawza giet differita ghas-sentenza.

Illi ghalhekk jidher illi kawza li damet ghaddejja ghal madwar hames snin, fil-verita instemghet biss fi tlett seduti. Illi ghalkemm kien hemm diversi intoppi tul l-*iter* processwali quddiem l-Ewwel Qorti, fosthom il-fatt illi l-gudikant inbidel ghal tlett darbiet, madanakollu ma hemmx dubbju illi r-raguni ewlenija ghad-dilungar zejjed fil-kawza, kien, kif gustament ikkonkludiet l-Ewwel Qorti, imputabbli lll-intimati li damu ikaxkru saqajhom ghal zmien twil biex iressqu l-provi taghhom u dan meta kienu a konoxxenza tal-fatt illi ir-rikorrenti kien ghalaq mill-provi tieghu fi stadju birki tal-proceduri. Illi l-appellanti jilmentaw mill-fatt illi huma damu ma gew innotifikati bl-affidavit tar-rikorrenti u id-dokumenti esebieti minnu, madanakollu mill-verbali jirrizulta illi hum kienu a konoxxenza ta' dawn il-provi tant illi anke ghal darba darbtejn taw il-kunsens taghhom sabiex il-provi ma jergghux jingabru mill-gdid meta inbidel il-gudikant. Fl-ebda waqt matul il-proceduri ma ilmentaw mill-fatt illi b'dawn il-

provi huma ma kenux gew innotifikati u fil-fatt l-Ewwel Qorti ordnat li l-intimati jinghataw kopja ta'l-istess a skans ta' xi ekwivoku procedurali.

Illi din il-letargija da parti ta'l-intimati inhasset sahansitra quddiem din il-Qorti u dan ghaliex ghalkemm kienu l-istess intimati li ressqu il-lanjanza taghhom in konnessjoni ma' din id-decizjoni ta' l-Ewwel Qorti, madanakollu naqqsu milli jattendu ghal iktar minn seduta wahda tant illi l-appell thalla ghas-sentena fl-assenza taghhom u dan wara li inghataw l-opportunita sabiex jattendu u iressqu is-sottomissjonijiet taghhom. Kwindi din il-Qorti ma tarax illi ghandha titbieghed mill-fehma milhuqa mill-Ewwel Qorti u dan ghaliex kawza li kellha tigi deciza f'qasir zmien ittawwlet inutilment u dan fil-maggior parti tal-*iter* processwali bi htija imputabbli lill-intimati appellanti.

Ghal dawn il-motivi l-appell qed jigi michud u is-sentenza appellata ikkonfermata bl-ispejjez kontra l-intimati appellanti.

(ft) Edwina Grima

Imhallef

VERA KOPJA

Franklin Calleja

Deputat Registratur