



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn hamsa (5) ta' Ottubru 2015

Rikors Numru 328/06 FDP

**Norman Lowell**

vs

**Saviour Balzan, Kurt Sansone u Matthew Vella**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil 31 ta' Ottubru 200 mir-rikorrent kontra l-intimati fejn, filwaqt illi ghamel referenza ghall-artikoli, ossija tlett artikoli, illi deheru fil-harga tal-Malta Today tal-Hadd, 14 ta' Mejju 2006, talab lill-Qorti tiddikjara illi dawna t-tlett artikoli ppubblikati mill-intimati "koordinati strategikament" kienu malafamanti u ingurjuzi fil-konfront tieghu peress illi ghamlu allegazzjonijiet foloz u malafamanti fil-konfront tar-rikorrenti bil-ghan illi ttelfulu jew tnaqqisulu r-reputazzjoni tieghu kif ukoll illi tingurjawh gravament u tqieghduh fil-perikolu.

Rat l-affidavit tar-rikorrent ippresentat kontestwalment mar-rikors promotur.

Rat l-artikolu intitolat '**Arsonists attack Daphne on same night Norman Lowel organises BBQ**', miktub minn Kurt Sansone u ippubblikat fil-pagna ta' quddiem tal-harga tal-Malta Today tal-14 ta' Mejju 2006 u li jkompli fil-hames pagna ta' l-istess gazzetta.

Rat l-artikolu intitolat '**Lowell's neo-nazis hit out at press after arson attack**' miktub minn Matthew Vella u ippubblikat fis-sitt pagna tal-harga tal-Malta Today tal-14 ta' Mejju 2006.

Rat l-artikolu intitolat '**Get the bastards now, before it is too late**' miktub minn Saviour Balzan u ippubblikat fid dsatax-il pagna tal-harga tal-Malta Today tal-14 taa' Mejju 2006.

Rat ir-risposta ta' l-intimati ippresentata fit 22 ta' Novembru 2006 fejn eccepew illi l-artikoli in kwistjoni jirrigwardaw fatti ta' natura socjali u politika li intrinsikament jirrigwardaw movimenti radikali pollitici li f'pajjizi ohrajn, huma inaccettabbli li joperaw, fid-dawl li jippropagaw politika li hija essenzjalment anti-razzjali u ta' livell ta' intolleranza politika illi huwa ta' pregudizzju socjali. Eccepew ukoll illi l-artikoli in kwistjoni ma jikkonfermawx b'determinatezza lill-attur, tant illi ffl-

istess affidavit tieghu, r-rikorrenti stieden lill-awturi sabiex jindikaw ghal min qed jghidu u, aktar minn hekk, il-kummenti maghmulha huma konformi mad-dritt t'espressjoni u trazmissjoni ta' informazzjoni f'socjeta li hija demokratika, apparti wkoll li, kif ser jigi ppruvat fil-kors ta' dina l-kawza, jammontaw ghal dak li huwa fair comment.

Rat ix-xhieda ta' **Norman Lowell** moghtija fil 15 ta' Mejju 2007 u d-dokumentazzjoni minnu esebita li turi l-hsara illi huwa soffra rizultat ta' l-artikoli meritu tal-kawza odjerna.

Rat ix-xhieda ulterjuri ta' Norman Lowell moghtija fit 28 ta' Mejju 2007 u dokumentazzjoni minnu esebita sabiex jispjega il-posizzjoni politika mehudha minnu u mill-partit politiku tieghu Imperium Ewropa, li hija deskritta bhala 'ethnic genetic interest'.

Rat ix-xhieda ta' **Saviour Balzan**, prodott mill-attur, moghtija fl 4 ta' Gunju 2007.

Rat ix-xhieda ta' **Matthew Vella**, prodott mill-attur, moghtija fit 8 ta' Ottubru 2007, fit 22 ta' Ottubru 2007, fit 22 ta' Jannar 2008 u fid 19 ta' Frar 2008.

Rat ix-xhieda ta' **Kurt Sansone** moghtija fit 12 ta' Gunju 2008.

Rat illi fis 7 ta' Mejju 2009, wara illi l-intimat Kurt Sansone ghamel apologija pubblika lir-rikorrent, ir-rikorrent Norman Lowell irtira l-procedimenti odjerni fil-konfront tieghu.

Semghet ix-xhieda ta' **Daphne Caruana Galizia** moghtija fit 23 ta' Jannar 2012.

Semghet ix-xhieda ta' Saviour Balzan moghtija fis 27 ta' Frar 2012 u rat id-dokumentazzjoni, ossija tlett artikoli, esebiti mill-istess Balzan.

Semghet il-kontro ezami ta' Norman Lowell moghtija fil 25 ta' Marzu 2013.

Semghet ix-xhieda ta' Saviour Balzan moghtija fid 29 ta' Novembru 2013 u rat id-dokumentazzjoni, ossija hdax-il artikolu, esebiti mill-istess Balzan.

Rat in-nota ippresentata mill-intimat Saviour Balzan fit-23 ta' Dicembru 2013 b'sensiela ta' blogs li inkitbu fis-sit [www.vivamalta.net](http://www.vivamalta.net).

Semghet il-kontro ezami ta' Saviour Balzan moghtija fit 13 ta' Gunju 2014.

Semghet ix-xhieda ta' Norman Lowell moghtija fit 13 ta' Gunju 2014.

Rat illi fit 2 ta' Frar 2015 il-partijiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw u ghalhekk il-kawza thalliet ghas-sottomissjonijiet finali.

Rat in-nota ta' sottomissjoni tar-rikorrenti ippresentat fl-10 ta' April 2015.

Rat in-nota ta' sottomissjonijiet ta' l-intimati Saviour Balzan u Matthew Vella ippresentat fit 18 ta' Gunju 2015.

Rat illi fit 18 ta' Gunju 2015 il-kawza thalliet ghas-sentenza.

## Ikkunsidrat

L-ewwel u qabel kollox, il-Qorti ma tistax ma turix id-disapprovazzjoni qawwija taghha ghad-dilungar inutili ta' dina l-kawza u tosserva illi f'socjeta demokratika bhalma hija dik ta' Malta, ghandu jigi assikurat minn kull min huwa involut fil-process gudizzjarju illi kawza tinqata fi zmien ragjonevoli, u tali dewmien, partikolarment f'kawzi ta' libell, ma jaghmel xejn ghajr illi jitfa dell ikrah fuq l-amministrazzjoni tal-Gustizzja. Ta' min jghid illi l-kawza odjerna ghaddiet minn taht idejn tlett gudikanti differenti li lkoll ghamlu l-ghalmu taghhom illi l-process gudizzjarju jimxi b'mod gust u effettiv filwaqt illi l-avukati tal-partijiet baqghu l-istess, u ghalhekk id-dewmien fil-kawza odjerna certament ma tistax tigi attribwita ghall Gudikatura.

## Ikkunsidrat

Fil-kawza odjerna, ir-rikorrent Normal Lowell, illi huwa politiku li qed imexxi l-organizazzjoni bl-isem ta' **Imperium Ewropa** u li kkandida ruhu ghal diversi elezzjonijiet pubblici ghall-posizzjonijiet kemm lokali kif ukoll Ewropej, nieda l-proceduri odjerni wara illi kienu dehru tlett artikoli fl-istess harga, ossija Malta Today tal-14 ta' Mejju 2006, w ilmenta illi tali artikoli kienu ibbazati kollha fuq fatti foloz u kienu intizi unikament sabiex jaghmlu hsara lilu u lill-liberta ta' l-espressjoni u tal-fehma, illi huwa tant ihaddan u jinsisti dwarha.

Jirrizulta mhux kontradett illi, fil-lejl ta' jumejn qabel ma gew ippubblikat l-artikoli meritu tal-kawza odjerna, ossija bejn il-lejl tal-Gimgha 12 ta' Mejju 2006 u is-Sibt 13 ta' Mejju 2006, il-gurnalista Daphne Caruana Galizia sfat vittma ta' attakk f'darha meta persuni mhux maghrufa garrew numru ta' 'tires' ta' karozzi kif ukoll laned tal-petrol minn fost l-eghlieqi li jinstabu wara ir-residenza u poggewhom mad-dar taghha, u wara pprocedew illi jqabbdhom bir-rizultat illi partijiet mid-dar ta' l-istess Caruana Galizia qabdu n-nar waqt illi l-familja taghha kienu reqdin u l-incident ma kellhux konsegwenza aktar gravi peress illi wiehed mit-tfal dahal id-dar ftit wara in-nar kien tqabbad u ghalhekk seta javza lill-membri l-ohra tal-familja biex jivvakaw id-dar u jissejhu nies ghall-ghajnuna.

Jirrizulta mhux kontradett ukoll illi fil-lejl ta' bejn il-Gimgha 12 ta' Mejju 2006 u is-Sibt 13 ta' Mejju 2006, il-grupp immexxi mir-rikorrent kien organizza BBQ gewwa d-Dwejra, illi attwalment kien ftit il-bogħod mid-dar ta' l-artikolista Daphne Caruana Galizia.

Jirrizulta mhux kontradett illi l-artikolista Daphne Caruana Galizia kienet ilha, ghal snin shah, tikkummenta pubblikament dwar it-twemmin u l-politika tar-rikorrent, u dana kienet qieghda tikkummenta b'mod negattiv u kontra dak it-twemmin illi jhaddan l-istess rikorrent, li l-artikolista Caruana Galizia tiddefinixx 'neo nazi and facist'.

Jirrizulta mhux kontradett ukoll illi l-forum imhaddan mis-simpatizzanti u membri tal-organizazzjoni **Imperium Ewropa**, ossija [vivamalta.net](http://vivamalta.net), kien ta' spiss jattakka lill-Daphne Caruana Galizia u l-operat taghha kif ukoll persuni ohra involuti fil-komunita, partikolarment dawk illi huma involuti fil-qasam ta' l-immigrazzjoni u l-ghajnuna relatata ma' l-istess.

Jirrizulta illi huwa mhux kontradett li r-rikorrent ihaddan twemmin estremist tal-lemin, li l-istess rikorrent jiddefinixxi bhala '*Ethnic Genetic Interest*', u ghal dan il-ghan l-istess rikorrent jikkwota bhala referenza ghalih lill-Professor Frank Salter li hareg bil-principju '*Ethnic Genetic Interest*'. L-istess Salter, f'dokument prodott mir-rikorrent stess u ppresentat il-Qorti in sostenn tat-twemmin tieghu, jghid, fost affarjiet ohra:

*"Immigration does not appear to be replacement. However, the long-term effect is direct replacement"*

*"Desire of a white ethny to preserve itself cannot be accomodated by democratic means"*

*"Soon whites will be replaced by groups with racial loyalty. Altruism will kill us."*

*"A nation can take centrues to form: one or two decades in immigration control for an advanced society to find its unity broken and heading for genetic replacement."*

Ir-rikorrent jkompli jiggustifika t-twemmin tieghu wkoll billi jirreferi ghal John Stuart Mill meta dana qal:

*"Free institutions are next to impossible in a country made up of different nationalities"*

Jirrizulta fatt mhux kontradett illi fil-gimghat u xhur qabel gara l-attakk fuq il-gurnalista Daphne Caruana Galizia, kienu saru attacki simili fuq persuni pubblici ohra illi kienu qed jagixxu kontra t-twemmin imhaddan mir-rikorrent u s-segwaci tieghu, u di fatti nies bhal Father Pierre Grech Marguerat u Dr Kathrine Camilleri, illi kienu involuti fil Jesuit Refugee Service Malta kellhom il-vettura tagghom kif ukoll id-dar tagghom imqabbdha.

Jirrizulta fatt mhux kontradett illi anke l-intimat stess, Saviour Balzan, kellu l-faccata tad-dar tieghu mqabbdha f'dawn l-attakki illi kienu qed isiru regolarment lill-persuni illi kienu qed jahdmu favur l-immigrazzjoni u kontra l-estremizmu anti-immigrazzjoni.

Jirrizulta mhux kontradett ukoll illi r-rikorrent qatt ma ikkundanna dawna l-attakki illi kienu qed isiru u, f'kummenti illi jidhru f'xi blogs fejn ikkummenta direttament hu, jidher qisu qieghed jiccelebra lill-persuni illi ghamlu tali attacki.

Jirrizulta mhux kontradett mir-rikorrent stess illi, ftit sieghat wara illi inharqet id-dar ta' Caruana Galizia, ir-rikorrent, fuq is-sit [vivamalta.net](http://vivamalta.net), huwa qal lill persuna li kien qed jikkumenta:

*"Yes, indeed, I have drunk to the dregs and toasted the heroes in my own incorregible ways"*

Jirrizulta mhux kontradett illi r-rikorrent huwa kontra l-immigrazzjoni u il-posizzjoni tieghu tista tkun riassunta bl-aktar mod car u dirett f'kumment illi huwa ghamel fuq is-sit [vivamalta.net](http://vivamalta.net) f'Settembru 2007 meta, b'reazzjoni ghall artikolu illi deher fuq EU Observer intitolat '*Lisbon stops legalisation of immigrants after avalance of applications*', huwa qal is-segwenti (fol 195):

*That is what happens when one shows mercy and kindness.  
The primitive Black takes it as a weakness - for he understands only force.  
We have to be merciless, whiplash in hand - and boot them all out!*

*We will stop every boat, at 14 miles out.  
We will simply refuse to let them pass - costa quel che costa  
We will set a shining example to the rest of Europe*

*Ant then, we will turn on those traitors - and give them the what for!*

*Saremo spietati!*

*Imperium*  
(Norman Lowell)

Jirrizulta, ghalhekk, illi ir-rikorrent, bhala mexxej ta' organizzazzjoni maghrufa bhala **Imperium Ewropa**, ghandu veduti kiefra u iebsa fil-konfront ta' l-immigrazzjoni u kull min huwa involut fid-difiza ta' l-immigranti u d-drittijiet taghhom, u ghalhekk, bi dritt, tali veduti certament iqanqlu reazzjonijiet daqstant iebsa fil-konfront tieghu u ta' l-organizzazzjoni tieghu.

## **Ikkunsidrat**

Fit-tlett artikoli illi dwarhom qieghed jilmenta ir-rikorrent, it-tema rikorrenti fiha kienet l-attakk illi kien sar fuq id-dar tal-gurnalista Daphne Caruana Galizia w il-fatt illi persuni simpatizzanti mar-rikorrent, li ghalhekk ihaddnu l-istess twemmin tieghu, setghu kienu involuti fl-attakki illi kienu sehew fil-gimghat ta' qabel kif ukoll fl-attakk illi sehh fid-dar ta' Daphne Caruana Galizia.

Fl-ewwel artikolu intitolat '**Arsonists attack Daphne on same night Norman Lowel organises BBQ**' u miktub minn Kurt Sansone, illi sussegwentement skuza ruhu ghal dak li kiteb u ghalhekk il-proceduri kontra tieghu gew irtirati, hemm rakkont dettaljat dwar l-incident illi kien sehh fid-dar ta' Caruana Galizia, b'kummenti ta' Caruana Galizia stess dwar dak li kien gara fejn, fost affarjiet ohra, qalet:

*This attack is part of a systematic attempt at creating a reign of terror, and it is linked, in my view, to the other attacks on the Jesuit Refugee Service, and on my fellow journalist Saviour Balzan"*

Dana l-artikolu jirreferi ukoll ghall-kundanni dwar tali attakk illi saru mill-Istitut tal-Gurnalisti, il-Journalists' Committee, il-Prim Ministru ta' dak iz-zmien, Dr Lawrence Gonzi, u ic-chairperson ta' l-Alternattiva Demokratika ta' dak iz-zmien, Dr Harry Vassallo. Dana ta' l-ahhar sahaq ukoll illi tali attakk kien "*an additional menace ... since it targets members of the press*" u zied jghid illi "*if the Press is not free, none of us are free.*"

Mill-banda l-ohra, tali artikolu jirreferi ghall fatt illi r-rikorrent, fil-mument illi sehh l-attakk, kien qieghed jorganizza BBQ ghalih u ghall hbieb simpatizzanti tieghu, mhux aktar minn kilometru w nofs 'l boghod mid-dar ta' Caruana Galizia filwaqt illi josserva illi mhux aktar minn siegha wara t-tifel ta' Caruana Galizia induna bin-nirien, ir-rikorrent ghamel kumment fuq is-sit [vivamalta.net](http://vivamalta.net), kif fuq deskritt, fejn qal, fost affarjiet ohra, illi kien qieghed jiffesteggja l-eroj tieghu kif jaf hu.

Fit-tieni artikolu intitolat "**Lowell's neo-nazis hit out at press after arson attack**", l-artikolist Matthew Vella ghamel referenza ghall varji kummenti illi kienu qed isiru kontra l-gurnalisti fuq is-sit [vivamalta.net](http://vivamalta.net), inkluz kumment minn persuna mhux maghrufa fejn dan qal:

*"The real threat to freedom of expression is the great number of journalists who do not do their work well, or hide the truth"*

Saret referenza ukoll ghall-kummenti illi kien ghamel ir-rikorrenti wara l-attakk kontra Caruana Galizia fejn, filwaqt illi ma kkundannax l-attakk illi kienet saret lill Caruana Galizia, jghid:

*"we do not condone such acts. we do not condone vile violence .... These incidents are hurting us! and no body else but the right. A chi giove questo incidente?"*

Fit-tielet atrikolu, intitolat "**Get the bastards now, before its too late**", l-opinjonista Saviour Balzan, illi huwa anke l-editor ta' l-istess gazzetta, jikkundanna bil-qawwa l-attakk fuq Caruana Galzia u jistqarr:

*"The incident at the Caruana Galizia residence is not only an affront to the freedom of the Press. It is more than that."*

Balzan imghad, dwar ir-rikorrent jghid is-segwenti:

*"If I said that Lowell is a menace to society, the same would happen. Well, here I go. Lowell and his bunch are a menace to society."*

Balzan jistqarr illi persuni estremisti ma ghandhomx jithallew juzaw il-mezzi tax-xandir sabiex ixchandru il-veduti estremisti taghhom u, kif jghid l-istess Balzan:

*"The war should be absolute. There has to be zero tolerance."*

Ghandu jinghad illi l-intimat Saviour Balzan kien ghadu kif sofra l-hrug tal-faccata tad-dar tieghu ffit gimghat qabel l-incident lill Caruana Galizia.

## **Ikkunsidrat**

Id-difiza imressqa miz-zewgt intimati Saviour Balzan u Matthew Vella (peress illi l-proceduri kontra Kurt Sansone gew irtirati) hija, in succinct bbazata fuq zewgt argumenti:-

- Id-dritt illi jirrapportaw liberament fatti ta' natura socjali u politika, partikolarment in vista tal-politika essenzjalment anti-razzjali tar-rikorrent; u
- Id-dritt ta' 'fair comment' f'socjeta demokratika bhalma hija dik Maltija

Ghalhekk, ikun opportun illi jigi ezaminat dak illi jinghad dwar tali difizi fil-guridprudenza kemm lokali kif ukoll, aktar importanti, fil Qorti Europea ghad-Drittijiet tal-Bniedem, li hija l-oghla istuzzjoni li tipprotetti u tippromuovi d-Drittijiet Fundamentali tal-Bniedem.

## **Ikkunsidrat**

Dwar id-dritt tal-gurnalist illi jirrapporta dak li jidhiru xieraq u korrett, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret 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, fejn qalet is-segwenti:-

*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.*

Fuq ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tghid is-segwenti:

*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 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-segwenti:

***(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**, mhaddna mill-Qorti Maltin ukoll:-

*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.*

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.

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:

*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."*

## **Ikkunsidrat**

Dwar it-tieni difiza imqajjma mill-intimat, ossija dik tal-‘fair comment’ **Gatley on Libel and Slander** jghid dwar id-difiza ta' 'fair comment',:

*To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.*

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

Di fatti, kif inghad minn Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

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

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal illi :

*dwar l-aspett tad-difiza tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment ġust tkun tghodd, jeħtieġ li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun ġustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kummentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.*

Tali tagħlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliża fl 1 ta' Dicembru 2010, Lord Phillips għamel is-segwent i konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

*A subsidiary but important issue was what it was that a defendant had to prove in order to establish the defence of fair comment. Counsel for the plaintiff submitted that the defendant had to establish that: (i) the words complained of were comment; (ii) the comment was on facts; (iii) the facts commented on constituted a matter of public interest; (iv) the comment was objectively "fair"; that is the comment was one that was capable of being honestly founded on the facts to which it related, albeit by someone who was prejudiced and obstinate; (v) the comment represented the defendant's honest opinion. If he discharged all these burdens, the defence could none the less be defeated by proof of malice on the part of the defendant, but the onus of proving malice lay on the plaintiff. Both the Court of Appeal and the House of Lords held that there was no burden on the defendant to establish the fifth element. The defendant's honesty was assumed unless the plaintiff could disprove it by establishing malice.*

Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja għad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567, para 43, tghid is-segwent i:

*... 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 ."*

Jirrizulta car, għalhekk, mill-provi fuq imressqa, illi hemm sabiex ididifiza ta' 'fair comment' u 'value judgment' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbażat fuq fatti sostanzjalment veri.

## **Ikkunsidrat**

Wara qari tal-posizzjoni meħudha mill-gurisprudenza nostrana u anke estera dwar il-punti u d-difizi mressqa quddiemha, il-Qorti ser tghaddi biex tagħmel il-konsiderazzjonijiet tagħha dwar il-kaz odjern.

Jirrizulta ippruvat illi ir-rikorrent huwa il-kap ta' organizazzjoni magħrufa bħala Imperium Ewropa li thaddan twemmin li fih tghid illi kull tip ta' immigrazzjoni għandha tigi respinta minn Malta u kull min hu ta' karnaggion skur ma għandhux jithalla jidhol f'Malta.

Jirrizulta ippruvat illi ir-rikorrent, f'diversi istanzi, tramite il-mezzi ta' xandir, heggeg lis-segwaci tieghu sabiex ihaddnu u jhaddmu t-twemmin tieghu u jaghmlu minn kollox biex jwaqqfu l-immigrazzjoni filwaqt illi jagixxu kontra l-persuni kollha illi b'xi mod qed jghinu lill-immigranti, liema persuni huwa jsejjah bhala "tradituri".

Jirrizulta ippruvat illi dakinhar illi sehh l-attakk fuq Daphne Caruana Galizia, ir-rikorrent flimkien mas-segwaci tieghu kienu qed jorganizzaw BBQ fil vicinanzi tad-dar taghha u jirrizulta wkoll mhux kontradett illi mhux anqas minn siegha wara li gara l-attakk, ir-rikorrent kien gia jaf bl-attakk peress illi iddikjara illi kien qieghed jiffesteggia l-eroj tieghu billi jixrob ghalihom.

Jirrizulta ampjament ippruvat illi r-rikorrent huwa persuna politika u ghalhekk, skond giurisprudenza ben stabbilita, huwa soggett ghall-livell ta' kritika ampja jekk mhux anke provokattiva, peress illi, ladarba persuna taghzel li taghti servizz fil-hajja pubblika bhala politiku, huwa ghandu jkun lest illi jigi kritikati ghall-kummenti u veduti tieghu, liema kritika tista tkun anke harxa, peress illi huwa essenzjali ghall-pajiz demokratiku bhalma hija dik Maltija illi jigi assikurat li mhux biss kullhadd ghandu d-dritt ta' liberta ta' espressjoni, izda, aktar u aktar, illi kullhadd ikollu wkoll id-dritt illi jigi mgharraf dwar kull informazzjoni u fatt li tista b'xi mod, tolqot il-kredibilita' ta' persuna politika.

Fil-kaz odjern, il-Qorti ma tistax ma tosservax illi l-veduti u twemmin tar-rikorrenti huma tali illi hija haga naturali u mistennija illi jigu kkontrastati b'veduti u kummenti iebsa jekk mhux anke provokattivi, u dana huwa rizultat tal-posizzjoni illi ir-rikorrent ha dwar certi aspetti illi jolqtu s-socjeta in generali, partikolarment l-immigrazzjoni, illi hija suggett li ilha tigi dibattuta sekli shah, jekk mhux millenji, u li ser dejjem issib il-kontroversja fiha.

Certament il-Qorti ma tistax ma tinnutax illi l-agir tar-rikorrent u certi kummenti illi jaghmel fuq il-mezzi tax-xandir u l-internet ma humiex tali illi tista tigi b'xi mod accettata f'socjeta demokratika bhalma hija dik Maltija, fejn id-diversita' u l-multi-kulturalizmu jiffurmaw is-sissien tas-socjeta maltija, kif tista turi l-istess lingwa Maltija, illi hija rizultat ta' hafna influwenzi differenti illi hakmu lill-Malta minn zmien ghal zmien.

Madanakollu, il-Qorti tirrileva illi huwa car, mill-provi kollha prodotti, illi l-kummenti u l-artikoli kollha meritu tal-kawza odjerna huma kollha kummenti gusti dwar fatti ta' natura socjali u politika illi kienu qed jahkmu lill-pajiz dak iz-zmien u li kienu qajmu thasdib serju fil poplazzjoni in vista ta' incidenti koroh li kienu qed jigru dak iz-zmien u li kienu necessarjament maqghuda mal-kampanja li kienet ghaddejja dak iz-zmien kontra l-immigrazzjoni, liema kampanja kienet qed titmexxa principalment mir-rikorrent.

## **Konkluzjoni**

Il-Qorti

Wara illi rat il-provi prodotti quddiemha,

Wara illi rat it-trattazzjoni ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-vertenza billi

**Tastjeni** milli tiehu konjizzjoni tal-kaz fil-konfront ta' Kurt Sansone stante illi l-proceduri gew irtirati fil-konfront tieghu fis-7 ta' Mejju 2009,

**Tilqa** l-eccezzjonijiet kollha ta' l-intimati Saviour Balzan u Matthew Vella, u ghalhekk

**Tichad** it-talbiet attrici kollha

Spejjez tal-proceduri odjerni ikunu kollha a kariku tar-rikorrent.

**Magistrat Francesco Depasquale**

**Marisa Bugeja**