



Fil-Qorti Tal-Magistrati (Malta) bhala Qorti ta' Gudikatura Kriminali

MAGISTRAT DR FRANCESCO DEPASQUALE

Libell Nru 6/11

Julia Farrugia

vs

Daphne Anne Caruana Galzia

Seduta ta' nhar it-Tnejn (19) ta' Ottubru 2015

Il-Qorti,

Rat l-akkuzi migjuba kontra l-akkuzata Daphne Anne Caruana Galizia ta' 45 sena, bint Michael Vella u Rose nee' Mamo, imwielda tas-Sliema nhar is 26 ta' awissu 2008 u li tabita Dar Rihana, Limiti tal-Mosta, detentrici tal-Karta ta' l-Identita' Nru 450664M fejn giet akkuzata minn Julia Farrugia

- a. Talli bhala awtrici, editrici u pubblikatrici tal-blog bl-isem "Daphne Caruana Galizia's Notebook: Running Commentary" fuq is-sit elettroniku www.daphnecaruanagalizia.com, permezz ta' diversi kitbiet u kummenti ppubblikati fuq l-imsemmi blog f'diversi granet u dan mix-xahar ta' Frar 2010 sad-data tat-tahrifa, ingurjat, immalafamat, illibellat u tellif u naqqast ir-reputazzjoni tal-kwerelanta, u dan fit-termini ta' l-Artikolu 3, 11, 21, 23 u 25 u disposizzjonjiet ohra that l-Att Dwar l-Istampa, Kap 248.

Rat id-dokumentazzjoni ippresentata flimkien mat-Tahrifa ta' Kawza Privata.

Rat illi fit 28 ta' Marzu 2011 il-Qorti ordnat illi l-proceduri odjerni jimxi flimkien mal-proceduri civili fl-ismijiet '*Julia Farrugia vs Daphne Caruana Galizia*' Avviz Nru 46/11, illi hija kawza civili fuq l-istess meritu ezatt.

Rat il-blogs annessi mat-Tahrifa, ossija is-segwentni blogs:

- **“300 camels for one cow”** ippubblikat fid 9 ta’ Frar 2010,
- **“Does anyone have a large rainproof condom for Charlon Gouder?”** ippubblikat fit 8 ta’ Marzu 2010,
- **“The Chairman of the Institute of Maltese Journalists can’t speak to me because he’s in Geneva”** ippubblikat fit 3 ta’ Marzu 2010,
- **“Oh, and had I told you?”** ippubblikat fis 7 ta’ Frar 2011,
- **“Oh, and had I told you? Julia Farrugia, editor of Savoieur Balzan’s Illum is Il-Bottom’s daughter – Karmenu Vella’s driver and the man implicated in court testimony as having shot at PN clubs with a submachine gun”** ippubblikat fis 7 ta’ Frar 2011,
- **“Gejja xi intervista fuq TX, jaqaw?”** ippubblikat fis 7 ta’ Frar 2011
- **“Don’t look at this if you want to sleep well tonight”** ippubbliakt fis 7 ta’ Frar 2011
- **“Ganni l-Pupa, Julia Farrugia’s father, Karmenu Vella’s ministerial car, a sub machine gun, and what Joseph Muscat’s shadow foreign minister refused to say in Court”** ippubblikat fid 9 ta’ Frar 2011
- **“Not from a Christmas cracker – somebody sent it in”** ippubblikat fit 13 ta’ Frar 2011
- **“This is so weird”** ippubblikat fil 15 ta’ Frar 2011
- **“Ronnie Pellegrini keeps clothes in his closet”** ippubblikat fis 6 ta’ Marzu 2010
- **“Ah, but three years ago Saviour wasn’t a Mintoffian”** ippubblikat fl-14 ta’ Frar 2011.

Semghet ix-xhieda ta’ **Julia Farrugia** moghtija fl-14 ta’ Ottubru 2011 u rat il-blogs ulterjuri esebiti mir-rikorrenti, ossija:

- **“The charming tale of the magistrate who shagged a man while his wife was having a baby”** ippubblikat fid 29 ta’ Jannar 2010
- **“Goodnight. Sleep tight”** ippubblikat fil 15 ta’ Marzu 2010

Semghet ix-xhieda ta’ Julia Farrugia moghtija fl-14 ta’ Novembru fejn esebiet serje ta’ artikoli illi dehru fil-gazzetti lokali in konnessjoni mal-kumpilazzjoni ta’ Nicholas Ellul maghruf bhala ic-Caqwes fejn kien qed jigi akkuzat illi kien qatel lill-Raymond Caruana fil-Kazin Nazzjonalista tal-Gudja fil 5 ta’ Dicembru 1986, fejn giet irrappurtata ix-xhieda ta’ diversi persuni, fosthom Karmenu Farrugia, missier ir-rikorrenti.

Rat bloggs ulterjuri esebiti mir-rikorrenti u li inkitbu mill-intimata wara il-proceduri odjerni, ossija:

- **“Don’t make yourself even more ridiculous, Julia Farrugia”** ippubblikat fis 16 ta’ Frar 2011,
- **“Did Julia live with il-Botom and her mother or not? I’m a bit concerned about saying ‘her father’ because apparently that’s libel”** ippubblikat fis 16 ta’ Frar 2011.
- **“Gird your loins, Saviour and Roger”** ippubblikat fis 17 ta’ Frar 2011.

Semghet ix-xhieda ulterjuri tar-rikorrenti moghtija fis 6 ta’ Frar 2012.

Semghet ix-xhieda ta’ **Daphne Caruana Galizia** moghtija fit 2 ta’ Novmebru 2012.

Rat illi fit 2 ta’ Novembru 2012 ir-rikorrenti iddikjara illi ma kellux aktar provi x’jippresenta.

Semghet ix-xhieda ta’ Daphne Caruana Galizia moghtija fis 17 ta’ Gunju 2013.

Semghet ix-xhieda ulterjuri ta’ Daphne Caruana Galizia moghtija fis 7 ta’ Frar 2014.

Semghet ix-xhieda in kontro ezami ta' Daphne Caruana Galizia moghtija fis 6 ta' Novembru 2014.

Rat illi fis 6 ta' Novembru 2014 il-partijiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Rat is-sottomissjonijiet tar-rikorrenti ippresentat fl-4 ta' Frar 2015.

Rat is-sottomissjonijiet ta' l-intimata ippresentati fill-11 ta' Mejju 2015.

Rat illi fil 11 ta' Mejju 2015 il-Qorti ddiferiet il-kawza ghas-sentenza.

Ikkunsidrat

Il-Qorti, l-ewwel u qabel kollox, tosserva illi dawna huma proceduri kriminali fuq meritu illi dwarha il-kwerelanta ghamlet ukoll proceduri civili kontra l-akkuzata, fl-ismijiet '*Julia Farrugia vs Daphne Caruana Galzia*', liema proceduri, ghall-ekonomija tal-gudizzju, imxew flimkien mal-proceduri odjerni u li dwarhom il-Qorti ippronunzjat ruhha illum stess.

Ikkunsidrat

Dina l-Qorti, f'proceduri ohrajn, gia kellha l-opportunita illi tikkummenta dwar is-sitwazzjoni ambivalenti eziztenti f'Malta, fejn, f'socjeta demokratika bhalma hija dik Maltija li thaddan it-twemmin tal-liberta' ta' l-espressjoni, fost affarjiet ohra, persuna illi tesprimi l-veduti taghha fi-pubbliku hija soggetta ghall-possibbilta' illi jittiehdu kemm proceduri civili kif ukoll kriminali kontra taghna, b'dawna ta' l-ahhar sahanitra jwasslu ghall-sentenza ta' habs effettiv.

Il-Qorti taghmel referenza ghal dak illi qal **Il-Kumitat tal-Ministri tal-Kunsill ta' l-Ewropa**, li taghha Malta hija Membru, f'rakkomandazzjoni intitolata '*Declaration on Freedom of Political Debate in the Media*' minnu adottat fit 12 ta' Frar 2004, fejn il-Kumitat sahaq illi:

“damages and fines for defamation or insult must bear a reasonable relationship of proportionality to the violation of the rights or reputation of others, taking into consideration any possible effective and adequate voluntary remedies....

Dana il-hsieb huwa anke rifless f'rapport mahrug mill-**UN Commission on Human Rights** fis-sena 1999 intitolat '*Promotion and protection of the right to freedom of opinion and expression*' fejn intqal illi:

Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied.

Tali hsibiet gew anke ikkonsidrat f'Dikjarazzjoni maghmulha fis-sena 2002 fejn il-“**UN Special Rapporteur**” flimkien mal- “**OSCE Representative on Freedom of the Media**” u il “**OAS Special Rapporteur on Freedom of Expression**”, lkoll flimkien hargu dikjarazzjoni fejn sahuq illi:

Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

Tali principji gew imhaddna wkoll fil-**Assembleja Parlamentari tal-Kunsill ta' l-Ewropa** meta, fis-sena 2007, permezz ta' **Risoluzzjoni Nru 1577**, intitolata "*Towards decriminalisation of defamation*", l-Assemblea kienet indirizzata lill-pajjizi Membri taghha bil-ghan illi huma kellhom jaghmlu mezz:

"to abolish prison sentences for defamation without delay; guarantee that there is no misuse of criminal prosecutions for defamation and safeguard the independence of prosecutors in these cases; define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection of the dignity of persons affected by defamation"

L-istess risoluzzjoni tiddikjara illi:

"prison sentences for defamation should be abolished without further delay. In particular it exhorts States whose laws still provide for prison sentences – although prison sentences are not actually imposed – to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms".

Din il-Qorti ma hijiex ser tiddilunga aktar fuq dana il-punt, stante illi tali ambivalenza legislattiva hija kwistjoni illi ghandha tigi kkunsidrata u deciza mill-Legislatur u l-Parlament Malti, li huwa elett mill-poplu kull hames snin sabiex jipprovd i ghad-dritrijiet u htigijiet tal-poplu, izda thoss illi wasal iz-zmien illi tali kwistjoni tigi kkunsidrata serjament sabiex id-dikjarazzjonijiet illi saru hafna snin ilu minn Awtoritajiet eminenti bhalma huma l-Kunsill ta' l-Ewropa u il-United Nations jigu mhaddna mill-legislazzjoni nostrana wkoll.

Ikkunsidrat

Dwar il-kaz odjern, il Qorti taghel referenza ghall-Artikolu 31 tal-Kap 248 illi tistabilixxi illi:

"L-azzjoni kriminali ghal-kull reat ta' l-artikolu 11 u 21 jistghu jinbdew biss bi kwerela tal-parti offiza."

L-artikolu 537 tal-Kap 9 tal-Ligijiet ta' Malta, reza applikabbli ghall-kwereli ukoll permezz ta' l-Artikolu 539, jipprovd i illi denunzi u kwereli jistghu isiru kemm verbalment kif ukoll bil-miktub. L-istess Artikolu 537, madanakollu, jipprovd i illi meta denunza ssir bil-fomm "*hija ghandha, klief fil-kazijiet li ma jkunux iridu dewmien, titnizzel bil-miktub minnufih u ghandha tigi iffirmata mid-denunzjant.*"

Il-Qorti tosserva illi fil-proceduri odjerni, ghalkemm il-Qorti fliet fir-reqqa id-dokumentazzjoni kollha ppresentata mill-prosekuzzjoni, kemm fil-proceduri odjerni kif ukoll f'dawk civili fuq imsemmija, imkien ma jirrizulta illi kien hemm ippresentat il-kwerela ta' Julia Farrugia, li huwa l-bazi illi fuqha il-prosekuzzjoni ghandha tmexxi il-kaz.

Jirrizulta ampjament ippruvat illi fil-kawza odjerna, dana ma huwiex kaz illi dwaru il-Pulizija setghet tipprocedi 'ex officio' minghajr il-htiega ta' kwerela, izda hija azzjoni illi tista tigi mibdija biss wara kwerela.

La darba tali kwerela ma tirrizultax fl-atti, tali proceduri huma ghalhekk monki u ghalhekk dana jimmilita favur l-akkuzata

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u ghamlet l-osservazzjonjiet fuq indikati

Tillibera lill-akkuzata mill-akkuzi kollha migjuba kontra taghha fuq nuqqas ta' provi.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur