



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn disgha (9) ta' Novembru 2015

Rikors Numru 399/12 FDP

**Joe Attard (ID 445459M) ghan-nom u in rappresentanza
tas-socjeta Green MT Limited (C 42136)**

vs

Josef Caruana bhala editur tal-gurnal l-Orizzont

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit 28 ta' Novembru 2012 fejn ir-rikorrenti, filwaqt illi ghamel referenza ghall-artikolu illi deher fil-harga tal-21 ta' Novembru 2012 intitolat "€2000 lixka", talab lill-Qorti tiddikjara illi l-kontenut ta' l-artikolu kien malafamanti u libelluz fil-konfront tas-socjeta rikorrenti u ghandu l-iskop illi jtellef jew inaqas ir-reputazzjoni tas-socjeta rikorrenti u ghalhekk l-istess intimat kellu jigi ordnat ihallas danni a tenur tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna u esebit mir-rikorrenti.

Rat l-eccezzjonijiet ta' l-intimat ippresentati fit 8 ta' Jannar 2013 fejn eccepixxa illi l-kitba ilmentata fiha biss fehmiel fuq fatt li huma ta' interess pubbliku filwaqt illi sahaq illi l-kitba hija ezercizzju tad-dritt tal-liberta tal-istampa f'socjeta demokratika u qadi tad-dmir tal-eccepjent li jzomm infurmat lill-qarrej tieghu b'dak li jkun ghaddej u insista illi kullhadd ghandu dritt ghall-opinjoni.

Semghet ix-xhieda ta' **Joe Attard** moghtija fl-24 ta' Gunju 2013.

Rat illi fit 22 ta' Jannar 2015, il-Qorti ghaddiet biex iddikjarat maghluqa l-istadju tal-provi tar-rikorrenti.

Semghet ix-xhieda ta' **Josef Caruana** ippresentat fit 2 ta' Marzu 2015 kif ukoll rat id-dokumentazzjoni minnu esebita.

Rat illi fit 30 ta' April 2015, l-intimat iddikjarat illi ma kellhux aktar provi x'jippresenta.

Semghet it-trattazzjoni ta' l-abbli difensur ta' l-intimat illi saret fil 15 ta' Gunju 2015, wara liema data il-kawza thalliet ghas-sentenza.

Ikkunsidrat

Mill-ftit provi ppresentati mir-rikorrent, jirrizulta illi is-socjeta Greem MT Limited hija wahda miz-zewgt skemi ta' riciklagg approvati lokalment u li xogholhom huwa li jigbru l-iskart mill-varji lokalitajiet u Kunsilli Lokali f'Malta u Ghawdex.

Jirrizulta illi, bhala parti mill-obbligi taghhom, il-kumpanniji illi joffru tali skemi huma obbligati illi jigbru percentagg minimu ta' skart minn Malta u Ghawdex, u dana ghahekk iwassal sabiex l-istess kumpanniji, fosthom is-socjeta rikorrenti, toffri varji incentivi lill min juza s-servizz taghhom, bil-ghan illi thajjar lill utenti sabiex jaghmlu uzu mis-servizz moghti minnhom.

Jirrizulta illi, fil-kaz tas-socjeta Green MT, bhala wahda mill-incentivi illi hija kienet qieghda toffri lill-Kunsilli Lokali, hija kienet qieghed toffri somma ossija "cash grant" ta' elfejn Euro (€2,000), illi l-Kunsilli Lokali setghu jutilizzawhom ghall-affarjiet relatati mal-Kunsill.

Jirrizulta illi, fl-artikolu meritu tal-kawza odjerna u li dwaru qieghed jilmenta ir-rikorrenti, tali somma giet definita bhala "Lixka", liema frazi ir-rikorrenti kien qed joggezzjona ghalha, peress illi, fi kliemu stess "dina ma hija lixka xejn ghar-raguni semplici illi din l-Green MT harget bl-incentiva biex min ried jissieheb fl-iskema sa certu data se jinghata cash grant, liema cash grant kien se jithallas kontra invoice li tinhareg mill-Kunsill u l-cash grant kien se jithallas direttament lill-Kunsill Lokali u hadd ma kien se jiehu cash grant personali".

Jirrizulta, mill-provi ppresentati anke mill-intimat, illi l-Assocjazzjoni tal-Kunsilli Lokali, fiz-zmien meta gie ippubblikat l-artikolu meritu tal-kawza odjerna, kien wera t-thassib tieghu dwar il-fatt illi jinghaddew flus kontanti lill-Kunsilli, u di fatti l-president ta' l-Assocjazzjoni, Michael Cohen, huwa kkwotat jghid illi "hu accettabli li kumpannija minn dawn it-tnejn (Green MT u Green Pack) thajjar lill-kunsilli permezz ta' incentiv, izda l-aghar haga hi meta dawn jithabbru b'dan il-mod bhala flus kontanti."

Ikkunsidrat

Kif qalet il-Qort Ewropeja fil-kaz **Delfi AS** deciz fl-10 ta' Ottubru 2013,

"(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 ..."

L-istess Qorti ziedet tghid ukoll illi

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 (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298; *De Haes and Gijssels v. Belgium*, 24 February 1997, § 37, Reports of Judgments and Decisions 1997-I; and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 58, ECHR 1999-III). In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313, and *Bladet Tromsø and Stensaas*, cited above, § 59). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, *Castells v. Spain*, 23 April 1992, § 46, Series A no. 236; *Incal v. Turkey*, 9 June 1998, § 54, Reports of Judgments and Decisions 1998-IV; and *Tammer v. Estonia*, no. 41205/98, § 62, ECHR 2001-I).

Ikkunsidrat

Fil-kaz odjern, jidher car illi dak rapportat mill-intimat kien ta' interess pubbliku, stante illi kien jirrigwarda l-gbir ta' l-iskart riciklat u ir-relazzjoni tal-kumpanniji awtorizzati jaghmlu tali gbir mal-Kunsilli Lokali.

Jirrizulta car ukoll illi, bhala parti mill-incentivi illi kienet qieghda taghti s-socjeta Greem MT, illi taghha huwa rappresetant ir-rikorrent, kien hemm oghtha ta' elfejn Euro fi flus kontanti illi kienu qed jinghaddew lill kull Kunsill Lokali illi jissiehed mar-rikorrenti qabel certa zmien.

Jirrizulta ghalhekk mhux kontestat illi tali oghtha ta' flus kienet incentiva sabiex thajjar lill xi hadd jissieheb maghha, u ghalhekk ma hemm xejn hazin illi tali incentiva tigi indikata bhala "lixka", peress illi anke "lixka" hija intiza sabiex thajjar lill xi hadd, u ghalhekk il-Qorti ma tara assolutament xejn hazin billi intuza tali kliem.

Certament, il-fatt illi intuzat il-kema lixka, li dwarha qieghed jilmenta r-rikorrent, ma timputa ebda tib ta' azzjoni kriminali jew malinja da parte tar-rikorrent, u ghalhekk ma tista qatt titqies bhala malafamanti u libelluza fil-konfront tar-rikorrent, partikolarment in vista ta' l-insenjamenti ta' l-oghla istituzzjoni illi tipprotedi d-drittijiet tal-bniedem fl-Ewropa, ossija l-Qorti Ewropeja ghad-Drittijiet tal-Bniedem.

Ghalhekk d-difiza mqajjma mill-intimat jisthoqq illi tigi milqugha.

Konkluzjoni

Wara illi rat il-provi prodotti quddiemha, u semghet it-trattazzjoni ta' l-abbli difensuri tal-intimat Josef Caruana,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimat,

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni ghandhom ikunu kollha a kariku tar-rikorrenti

Magistrat Francesco DePasquale

Marisa Bugeja
Deputat Registratur