FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn, l-ewwel (1) ta' Frar 2016

Rikors Numru 304/09 FDP

Joseph Mangion (ID 559465M), bhala President u Desiree Falzon (ID 404865M) bhala Segretarju ta' Birdlife Malta, f'isimhom personali u ghan-nom ta' Birdlife Malta

vs

Joe Perici Calascione
(ID M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil-25 ta' Awissu 2009, fejn ir-rikorrenti talbu lill-Qorti tikkundanna lill-intimat ihallas danni talli, permezz ta' pubblikazzjoni ta' Press Release miktuba mill-intimat, intitolat "*Birdlife Malta infiltrate Education Department*", immalafamaw lill-atturi u jesponuhom ghad-disprezz u ghar-redikolu tal-pubbliku.

Rat il-Press Release mahruga fl-10 ta' Gunju 2009, mahruga mill-FKNK, ossija Federazzjoni Kaccaturi u Nassaba Konservazzjonisti u iffirmata b'isem l-intimat, bhala PRO ta' l-istess Ghaqda.

Rat ir-risposta ta' l-intimat ippresentata fl-10 ta' Mejju 2010 fejn eccepixxa, preliminarjament, illi l-Press Release inharget mill-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti, li taghha l-intimat huma l-Publi Relations Officer, izda huwa ma ghandhux rappresentanza guridika taghha u ghalhekk ghandu jigi liberat mill-osservanza tal-gudizzju. Eccepixxa wkoll, fil-meritu, illi dak illi hemm miktub huwa essenjalment "fair comment".

Rat ix-xhieda ta' **Joseph Mangion** moghtija fid 9 ta' Frar 2011 u rat id-dokumentazzjoni minnu esebita.

Rat illi bejn l-14 ta' Gunju u it 28 ta' Novembru 2011 saru erbgha seduti fejn il-Qorti giet infurmata illi l-partiijet kienu qed jippruvaw jittransigu.

Rat illi fis 16 ta' Jannar 2012, transazjoni ma ntlahqietx u ghalhekk tkomplew il-provi, fejn il-Qorti semghet lill **Desiree Falzon**.

Semghet ix-xhieda ta' **Joseph Mangion** moghtija fit 23 ta' April 2012.

Semghet ix-xhieda ta' **Nicholette Falzon** moghtija fit 23 ta' April 2012.

Rat illi fl-4 ta' Gunju 2012 ir-rikorrenti iddikjaraw illi ma kellhomx aktar provi x'jippresentaw.

Semghet ix-xhieda ta' **Lino Farrugia**, Segretarju tal-FKNK moghtija in ezami u kontro ezami, fit 8 ta' Lulju 2013 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Joe Perici Calascione**, PRO tal-FKNK u intimat fil-kawza odjerna, moghtija in ezami u kontro ezami fit 28 ta' Ottubru 2013, fl-24 ta' Marzu 2014 u fl-10 ta' Ottubru 2014.

Rat illi fl-10 ta' Ottubru 2014, il-kawza giet differita ghas-sottomissjonijiet tar-rikorrenti.

Rat illi r-rikorrenti ippresentaw is-sottomissjonijet taghom fis 17 ta' Frar 2015.

Rat illi fid 19 ta' Frar 2015 il-kawza giet differita ghas-sottomissjonijet intimati.

Rat illi fl-14 ta' Mejju 2015 l-intimati ippresentaw is-sottomissjonijet taghhom, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta illi l-kawza odjerna hija rizultat ta' Press Release illi nhagret mill-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti fl-10 ta' Gunju 2009 fejn dina qalet is-segwenti: (fol 2)

> *" Birdlife Malta Infiltrate Education Department*
>
> *It is with deep remorse and resentment that the Federation for Hunting and Conservation – Malta (FKNK) notes the Department of Educations' issue of calls for applications for the posts of Bordlife Malta teachers for both primary and secondary level education.*
>
> *Birdlife is renowned for its anti-hunting lobby and more so for its gradula 'brain washing' of our children through the suppluy of misinterpreted and misrepresented material facts, thus depriving them of aa fair and unbiased platform about what the environment and conservation should all be about.*
>
> *The FKNK seriously deplores this action and feels that it and its members' children are bring gravely discriminated against. Whilst the applications are publicly issued, both the present Minister for Education and her predecesor have, to date, refused to meet officials of the FKNK in order to be in a position to offer a lever educational platform for our children.*
>
> *One again the Federation formally requests an urgent meeting with Minister Cristina in order to discuss these important issues that concern our children's education.*
>
> *Joe Perici Calascione*
>
> *PRO FKNK"*

Jirrizulta illi dina l-istqarrija inharget mill-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti (FKNK) rizultat ta' '***Letter Circular***' mahruga mid-Direttorat ghal Servizzi Edukattivi datata 26 ta' Mejju 2009 intitolta "*Applications for the Posts of teachers for Birdline in Secondary Schools in the Peripatetic Service (Malta & Gozo)* u cirkolata ma' Kapjijiet ta' l-iskejjel kollha tal-Gvern. (fol 82)

Jirrizulta illi tali sejha kienet intiza sabiex ikun hemm ghalliema ma' l-iskejjel kollha sekondarji tal-Gvern, illi jkollhom, bhala xoghol is-segwenti:

"Selected candidates will be expected to:

- *Visit secondary schools giving talks on Birdlife Migration Project*
- *Co-ordinate follow-up activities*
- *Liason with Birdlife Office*
- *Encourage bird watching"*

Jirrizulta illi l-FKNK hassitha urtata minn tali sejha mid-Dipartiment tal-Edukazzjoni u ghalhekk harget tali stqarrija fejn wriet it-thassib serju taghha kif ukoll insistiet illi, ghalkemm kienu ilhom jitolbu laqghat mal-Minister tal-Edukazzjoni, tali laqghat baqghu qatt ma saru.

Jirrizulta, finalment, illi fl-10 ta' Ottubru 2009, il-FKNK iltaqghat mal-Ministru tal-Edukazzjoni u inharget stqarrija illi kienet tghid is-segwenti:

> *A delegation from the Federation for Hunting & Conservation – Malta (FKNK) called on the Minister for Education, Culture, Youth and Sport Dolores Cristina at her office in santa Vennera.*
>
> *The FKNK officials voiced their concern regarding various complaints made by several members of the Federation in that some teachers, especially in primary schools but also in higher levels, are passing anti-hunting/trapping remarks During lessons which in turn influence the pupils to turn against ther hunter/trapper parents.*
>
> *The Minister, who was accompanied by Dr Grace Grima, Director General for Quality and Standards in Educations, who is also responsible for the curriculum, emphasised that teachers should stick to the lesson curriculum and refrain from making anti-hunting/trapping remarks to their purpils during lesssons.*
>
> *The FKNK agreed to supply the Ministry with a 'Teachers' Pack' expaining the conservation efforts of hunters and trappers in the natural enviornment. The FKNK officials further explained that upon the Ministry's approval, the Pack can be exlained in more detail to teachers at seminars that can be organised for such purpose.*
>
> *Lino Farrugia*
> *Secretary FKNK.*

Ikkunsidrat

Jirrizulta illi r-rikorrenti, bhala President u Segretarja tal-Birdlife Malta rispettivament, hassuhom malafamati bl-allegazzjonijiet illi kienu saru fil-konfront tal-Birdlife. Huwa stqarrew illi ma kienx minnu illi l-Birdlife kienet 'infiltrat' fid-Dipartiment tal-Edukazzjoni, izda hija kienet biss ippresentat progett lid-Dipartiment tal-Edukazzjoni, illi kien intlaqa' mill-istess Dipartiment, wara

liema, l-istess Dipartiment hareg sejha ghall ghalliema interessati abbazi tal-progett presentat mill-Birdlife, u ghadda biex ghazel l-ghalliema sabiex imexu dana il-progett.

Ir-rikorrenti hassuhom malafamati wkoll ghall fatt illi ma kienx minnu illi huma kienu jippromuovu messagg kontra il-kacca, u dana peress illi kienu qed jinsistu illi huma jippromuovu l-messagg kontra l-kacca illegali, u mhux konta l-kacca legali, u dana fost hafna affarjiet ohra illi huma jippromuovu favur l-ambjent u juzaw dievrsi mezzi, fosthom il-ktejjeb 'Dimja Wahda', illi jitqassam fl-iskejjel.

Ir-rikorrenti, kif ukoll persuni ohra involuti fil-programm edukattiv tal-Birdlife Malta, jikkontendu finalment, illi ma huwiex minnu illi huma jaghtu informazzjoni qarrieqa u misinterpratata, kif qed jallegaw l-intimati, u, fil-kaz ta' Nicholette Falzon, illi ma hijex parti mill-kawza, dina thossha malafamata bl-akkuza illi bhala ghalliema hi, flimkien ma' l-ghalliema sekondata mid-Dipartiment tal-Edukazzjoni ghall progett taghhom fil-primarji, b'xi mod jaghmlu 'brain washing' tat-tfal kontra l-kacca.

Ikkunsidrat

L-intimat, da parte tieghu, laqa' ghal dak lilu imputat billi insista, l-ewwel u qabel kollox, illi huwa kien kiteb l-istqarrija meritu tal-kawza odjerna ghan-nom u in rappresentanta tal-Federazjoni Kaccaturi u Nassaba Konservazzjonisti, u ghalhekk ma kellux jitharrek fil-kwalita' personali tieghu, kif ghamlu ir-rikorrenti. Apparti minn hekk, fuq il-meritu, l-intimat sahaq illi dak illi nkiteb kien '*fair comment'* fuq fatti sostanzjalment veri.

Ikkunsidrat

Il-Qorti, l-ewwel u qabel kollox, ma tistax ma tesprimix d-disappunt taghha ghal fatt illi dawna z-zewgt ghaqdiet ambjentalisti ewlenin f'Malta, minhabba fit-twemmin taghhom w il-posizzjonijiet opposti taghhom fuq kwistjonijet ambejntalisti, ma kienux kapaci illi jirrikonciljaw id-differenzi taghhom bi transazzjoni bejniethom, ghalkemm dina l-Qorti tat lill-partijiet varji opportunitajiet sabiex jaslu ghal tali soluzzjoni.

Kunsidrat dan, il-Qorti tosserva wkoll illi l-battalja tal-hsibijiet bejn dawk hemm imsejha 'ambjentalisti' u dawn imsejha 'kaccaturi' hija battalja illi certament ilha tesisti decenni shah u ghad tibqa tesisti sakemm il-bniedem ikun ghadu liberu illi jaghzel u jgestixxi d-delizju tieghu liberament, liema battalja tispicca meta tali liberta' titnehha, fatt illi, madanakollu, il-Qorti tifhem illi hadd ma jawspika illi qatt tigri ghax inkella l-libertajiet illi ahna tant nghozzu ikunu gew mnaffra, jekk mhux imehhija ghal kollox.

Dana qieghed jinghad ghax, fil-kaz odjern, ghandna zewgt entitajiet illi jhaddnu veduti diametrikament opposti fejn tidhol il-kacca ta' ghasafar filwaqt illi t-tnejn finalment ihaddnu l-istess ghan ewlieni, ossija dik illi jipproteggi l-interessi tal-membri tieghu u tat-twemmin ta' l-istess membri.

Ikkunsidrat

L-ewwel difiza mressqa mill-intimat quddiem dina l-Qorti kienet illi huwa qatt ma messu tharrek fil-kwalita' personali tieghu, izda messa tharrket il-Federazzjoni Kaccaturi u Nassaba

Konservazzjonisti ili taghha l-intimat kien il-Public Relations Offices meta harget il-Pree Release meritu tal-kawza odjerna.

Jirrizulta fatt indisputat illi l-istqarrija illi minnha qed jilmentaw ir-rikorrenti, kienet staqrrija mahruga mill-Federazzjoni Kaccaturi u Nassaba Konservazzjonisti, illi taghha l-intimat kien il-PRO, u mhux mill-intimat personalment. Dana jirrizulta kemm mill-istqarrija stess kif ukoll mix-xhieda u dokumentazzjoni ippresentata quddiem dina l-Qorti, u ghalhekk, l-ewwel difiza kif imsesja mill-intimat tirrizulta, minnha innifisha, ippruvata.

Ikkunsidrat

Il-Qorti tista facilment tieqaf hawn, madanakollu, kieku taghmel hekk tkun qieghda tabdika mill-obbligu taghha illi huma biss taghmel gustizzja izda, aktar u aktar, illi tidher li qed taghmel gustizzja.

Ghalhekk, ikun opportun illi wiehed jidhol ukoll fil-meritu tal-kaz.

Ir-rikorrenti jilmentaw, principalment, minn tlett aspetti tal-istqarrija – il-fatt illi fl-istqarrija jinghad illi l-Birdlife “inflitrat’ id-Dipartiment tal-Edukazzjoni, il-fatt illi l-Birdlife qieghda timmanipula u timmisrappresenta l-informazzjoni w il-fatt illi l-Birdlife qieghda taghmel “brain washing” tat-tfal.

L-intimat, dan parte tieghu, jishaq illi l-fatt illi d-Dipartiment tal-Edukazzjoni irrikonoxxa illi kellu jkun hemm ghalliema ufficjali tal-Birdlife fl-iskejjel tal-Gvern kienet prova sufficjenti illi attwalment il-Birdlife kienet dahhlet it-twemmin taghha fid-Dipartiment tal-Edukazzjoni. Dwar manipulazzjoni ta’ l-informazzjoni kif ukoll ‘brain washing’ tat-tfal, l-intimat jaghmel referenza ghall ktejjeb tal-Birdlife, mahrug prejodikament u mqassam fl-iskejjel tal-Gvern, intitolat ‘Dinja Wahda’ u jindika illi, fejn tidhol il-kacca, l-informazzjoni moghtija lill-qarrejja dwar il-kacca huma kollha negattivi u intizi sabiex jitfghu lill-kaccaturi f’dell ikrah.

Il-Qorti tosserva illi harsa lejn dana il-ktejjeb, illi jipprovdi hafna ifnormazzjoni siewja u interessanti dwar l-ambjent u l-protezzjoni taghha, imkien ma jghaddi xi tipt a’ kumment favur il-kacca, izda, tul il-ktejjeb kollu, hlief referenzi ghall kacca illegali u massakri ma ssirx.

Il-Qorti tosserva illi ghalkemm tali attivitajiet illegali ghandhom jigu kkundannati u skoraggiti fit-tfal minn eta tenera, certament hemm aspett legali tal-kacca illi tali ktejjeb imkien ma jidher illi jikkontempla, u ghalhekk l-intimat u il-Federazzjoni huma sostanzjalment korretti meta jghidu illi tali ktejjeb jaghti informazzjoni negattiva dwar il-kacca.

Huwa fatt maghruf illi l-kacca illegali hija hazina u ghandha tigi kkastigata kif mishoqq – madanakollu, hemm ukoll il-kacca legali, li ghandu jigi protett ukoll u muri lill-kullhadd, partikolarment it-tfal zghar, sabiex it-tfal jinghataw stampa kompleta tal-kacca – sfortunatament, il-ktejjeb informattiv maghmul mill-Birdlife jonqos milli jilhaq tali bilanc.

Ikkunsidrat

Id-difiza mressqa mill-intimata hija, principalment, dik ta’ ‘*fair comment*’, stante illi sahqet illi l-pubblikazzjoni hija bbazata fuq fatti sostanzjalment korretti..

Kif qalet il-Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijet **Axel Springer AG vs Germany** deciza fis-7 ta’ Frar 2012, intqal 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 (see, among other authorities, Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24; Editions Plon v.France, no. 58148/00, § 42, ECHR 2004-IV; and Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

Kif jinghad f'**Gatley on Libel and Slande**r :

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.

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.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi dak ilmentat mill-Federazzjoni tal-Kaccaturi u Nassaba Konservazzjoniet kien wiehed ibbazat fuq fatti sostanzjalment veri, stante illi kien minnu illi l-Birdlife kienu gew rikonoxxjuti mid-Dipartiment tal-Edukazzjoni sabiex jiehdu hsieb jwasslu l-messagg taghhom lit-tfal ta' l-iskejjel tal-Gvern, kif ukoll kien minnu illi fil-ktejjeb taghhom, ma kien hemm ebda referenza ghal kacca legali u l-beneficcji taghha, izda kien hemm biss referenzi ghal kacca illegali u l-kosnegwenzi koroh taghha.

Dana kollu jindika illi l-kumment illi kienet qieghda taghmel il-Federazzjoni Kaccaturi u Nassaba Konservazzjoni kien wiehed sostanzjalment korrett u ghalhekk l-ilment tar-rikorrenti ma jistax jintlaqa.

Konkluzjoni

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimat,

Tichad it-talbiet attrici.

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

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur