



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn (16) ta' Mejju, 2016.

Rikors Numru 55/13 FDP

**Cyrus Engerer
(ID 644981M)**

vs

Lawrence Gonzi (ID 489953M), Paul Borg Olivier (ID 337169M) u Marthese Portelli (ID 15276G) bhala Kap, Segretarju Generali u President tal-Kumitat Ezekuttiv tal-Partit Nazzjonalista u, b'digriet tal-10 ta' Gunju 2013, assumew l-atti Dr Simon Busuttil, Dr Chris Said u Dr Ann Fenech bhala Kap, Segretarju Generali u President tal-Kumitat Ezekuttiv tal-Partit Nazzjonalista u, b'digriet tat 18 ta' Jannar 2016, assumiet l-atti Rosette Thake bhala Segretarja Generali

Il-Qorti:-

Rat ir-rikors promotur ippresentat fl-20 ta' Frar 2013 fejn, filwaqt illi ghamel referenza ghall-artikolu illi deher fuq il-'portal elettroniku' *mychoice.pn* amministrat mill-Partit Nazzjonalista fid-19 ta' Frar 2013 fejn intqal, fost affarjiet ohra, illi r-rikorrenti irrekordja kollegi tieghu waqt laqgha tal-Kunsill Lokali, ta' daqqa ta' stallett lill-kollegi tieghu u wassal biex kunsullier tal-PN jirrizenja, talab lill-Qorti sabiex tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tieghu u ghalhekk tikkundanna lill-intimati ihallsuh danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu, illi minnu lmentha r-rikorrent, illi kien intitolat "**Positivity at its best?**" u jghid is-segwenti:

'We are running a positive campaign' - if you repeat it often enough, you might actually find yourself believing it. This is the first rule about marketing. Repeat, repeat, repeat and your audience will start believing you. How do you think the Euro Change Over planned their marketing campaign? By repeating the exchange rate over and over - I bet you still remember it!

'Malta taghna lkoll'. Repeat it as many times as you can and you will start believing that behind the slogan there is actually the famous roadmap with road signs and traffic lights for good measure.

It's quite cheap coming from a Malta Labour Party that has spent the last five years badgering the Prime Minister's credibility and at each step of the way trying hard to undermine his authority by tugging the rug from under his feet.

With each tug a Minister fell or was asked to resign. The end justified the means. JosephMuscat.com must have known that a Prime Minister with Gonzi's track record on the economy was going to be difficult to beat at the polls. You have to give it to him - there is a lot at stake.

This is why the 'positive' campaign cannot be anything but a charade. It comes after a legislature of 'negative' campaigning. A year ago Cyrus Engerer was hailed a hero for recording his colleagues during a Local Council meeting. We all heard the tapes, the PN Counsellor was hounded and resigned. Backstabbing your own colleagues pays off - today he is the face of new Labour and honorary editor of the great Leader's book. The same happened this week - this time a Labour insider recorded Toni Abela (right hand of the great Leader). There are no heroes in PN as a result - just an anti-hero Toni Abela and a screamingly strange reaction by MuscatPL. Are Labour bring beaten by their own game?

What's good for the goose is not good for the gander for PL. I trust we can all see through the charade. All you have to do is read the columns of the l-Orizzont or watch Super One for a few minutes ... The truth is obvious for those who wish to see!"

Ra ir-risposta ta' l-intimati ippresentata fil-25 ta' April 2013 fejn saħqu illi l-pubblikazzjoni ma kienetx libelluza billi tikkonsisti f'espresjoni ta' opinjoni b'bazata fuq fatti sostanzjalment veri u għalhekk tammonta għall-"fair comment" jew "value judgment" dwar persuna pubblika, u dana huwa dritt ta' kull cittadin protett kemm mill-Kostituzzjoni ta' Malta u kemm mill-Konvenzjoni Ewropea.

Semgħet ix-xhieda tar-rikorrent **Cyrus Engerer** mogħtija fis-27 ta' Jannar 2014.

Rat illi fis-7 ta' Marzu 2014 ir-rikorrent iddikjara illi ma kellu ebda provi ohra x'jippresenta.

Semgħet ix-xhieda ta' **Dr Paul Borg Olivier**, mogħtija fid 29 ta' Settembru 2014 u 2 ta' Frar 2015 u d-dokumentazzjoni minnu esebata.

Semgħet ix-xhieda ta' **Dr Joanne Gonzi** mogħtija fil-11 ta' Gunju 2015 u fil 15 ta' Ottubru 2015.

Rat illi fit 23 ta' Novembru 2015 il-partijiet qablu illi ma kellhomx aktar provi x'jippresentaw.

Rat in-nota tal-osservazzjonijiet tar-rikorrent ippresentata fit-18 ta' Jannar 2016.

Rat in-nota ta' sottomissjonijiet tal-intimati ippresentati fil 15 ta' April 2016.

Rat illi fil 25 ta' April 2016, il-kawza giet differita għas-sentena.

Ikkunsidrat

Jirrizulta illi fid-19 ta' Frar 2012, jigifieri fl-eqqel tal-kampanja elettoral li wasslet ghall-elezzjoni li sehhet fil-bidu ta' Marzu 2013, fuq is-sit elettroniku 'www.mychoice.pn', illi kien is-sit elettroniku utilizat mill-Partit Nazzjonalist bhala parti mill-kampanja informattiva tieghu, ittella artikolu intitolat "**Positivity at its best?**" fejn l-artikolist, mhux identifikat, ikkummenta dwar il-kampanja elettoral imtella mill-Partit Laburista, dak iz-zmien fl-Opposizzjoni.

Jirrizulta illi tali artikolu kien qieghed jaghmel referenza ghall-mod kif il-Partit Laburista kien qieghed jaghmel il-kampanja tieghu u jghid, fost affarjiet ohra, "*This is why the positive campaign cannot be anything but a charade*".

Jirrizulta illi, bhala parti minn tali artikolu, l-artikolist kiteb is-segweni:

"A year ago, Cyrus Engerer was hailed a hero for recording his colleagues during a Local Council meeting. We all heard the tapes, the PN Counsellor was hounded and resigned. Backstabbing you own colleagues pays off - today he is the face of new labour and honorary editor of the great Leader's book"

Jirrizulta illi r-rikorrent hassu malafamat bil-kontenut ta' dak miktub u ghalhekk ghamel il-kawza odjerna illi giet intavolata l-ghada illi saret tali pubblikazzjoni.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent kien ghamel zmien bhala attiv fil-Partit Nazzjonalista u kien gie elett ghan-nom tal-Partit Nazzjonalista sabiex iservi bhala Kunsullier fil-Kunsill Lokali ta' Tas-Sliema.

Jirrizulta illi, mument minnhom, ir-rikorrent gie elett ukoll bhala Vici-Sindku tal-Kunsill Lokali ta' Tas-Sliema wara illi l-post kien gie vakat rizultat tal-fatt illi is-Sindku li kien hemm, ossija Nikki Dimech, kien irrizenja minhabba f'certi investigazzjonijeit illi kienu qed isiru fit-tmexxija tal-Kunsill u l-Vici Sindku li kien hemm, ossija Dr Joanna Gonzi, kienet giet eletta Sindku tal-Kunsill Lokali ta' Tas-Sliema.

Jirrizulta, mill-provi prodotti, illi mument minnhom, ir-rikorrenti kien irrizenja minn mal-Partit Nazzjonalista u affilja ruhu mal-Partit Laburista fejn ukoll beda jkun involut fil-kampanja illi l-Partit Laburista, dak iz-zmien, kien qieghed imexxi ghall-Elezzjoni Generali tas-sena 2013.

Jirrizulta, minn rappurtagg li deher fuq il-media lokali, esebiti mill-intimat u mhux ikkontestati mir-rikorrent bl-ebda mod, illi kienu inbdew proceduri kriminali kontra zewgt kunsulliera ohra tal-Kunsill Lokali ta' Tas-Sliema meta r-rikorrent kien jiffirma parti mill-istess Kunsill, ossija Bobby Cali u Martin Debono, u f'tali proceduri kriminali, li minnhom eventwalment gew liberati, kienu gew esbiti diskursati illi sehew bejn ir-rikorrenti, Dr Joanna Gonzi, dak iz-zmien Sindku tal-Kunsill Lokali ta' Tas Sliema, u terza persuna.

Jirrizulta f'tali diskursati kif irrappurtati fuq il-mezzi tax-xandir sentejn u nofs wara l-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna u qatt ikkontestati mir-rikorrent (fol 33), illi meta Dr Joanna Gonzi tinstema tghid illi riedet toqtol lill-Cali u Debono u dana in konnessjoni ma kwistjonijiet illi kienu ghaddejnin dak iz-zmien fil-Kunsill Lokali ta' Tas-Sliema, ir-rikorrenti jinstema jghidilha "*easier to hit them with a big hammer*".

Ikkunsidrat

Jirrizulta, waqt il-mori tal-kawza, illi hadd mill-partijiet, la ir-rikorrenti u lanqas l-intimati, ma ippresentaw dawna r-recordings illi referenza ghalhom ir-rikorrent hassu malafamat bihom u ghalhekk il-Qorti trid tistrieħ biss fuq dak illi gie rappurtat minn mezz ta' xandir ohra li, minn naha tagħhom, kienu qed jirrapurtaw dak illi kien qiegħed jintqal u jigri fi proceduri kriminali.

Jirrizulta, madanakollu, illi dak hemm irrappurtat fil-media lokali, qatt ma gie kkontestat mir-rikorrenti u r-recordings illi gew irrappurtati u li ghalihom issir referenza fl-artikolu meritu tal-kawza odjerna, huma parti mill-proceduri kriminali illi eventwalment wasslu sabiex Bobby Cali u Martin Debono jigu liberati minn kull akkusa migjuba kontra tagħhom.

Jirrizulta, in fatti, illi d-difiza principali ta' l-intimati hija **biss** illi l-pubblikazzjoni tammonta għal 'fair comment' jew 'value judgment' fuq fatti sostanzjalment veri.

Għalhekk ikun opportun illi jigu kkunsidrat certi elementi principali li jirregola il-principju ta' "fair comment" jew "value judgment".

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

... dwar l-aspett tad-difiza tal-kumment gust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment gust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħli 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 mistħoqq; (d) il-kumment irid ikun tali li jikkwalifika bħala kritika u mhux żebliħ, tgħajjir 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 preçiż 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 Ingliza fl-1 ta' Dicembru 2010, Lord Phillips għamel is-segwent i konsiderazzjonijiet meta wieħed 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.

Tali principju gew anke riflessi minn decizjonijiet tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem, fejn, per eżempju, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, u qalet is-segwent i:-

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.*

L-istess Qorti taghmel referenza ghall-bilanc illi irid jinholoq bejn id-dritt tal-liberta' ta' l-espressjoni u d-dritt tal-protezzjoni tar-reputazzjoni, u taghmel is-segweni osservazzjonijiet:

..... 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.

Sabiex jigi vverifikat jekk intlahaqx bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fl-istess decizjoni fuq imsemmija, tghaddi biex issemmi sitt kriterji importanti illi ghandhom jitqiesu sabiex jigi assikurat li, 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-segweni:

(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.

Dina l-Qorti tosserva illi filwaqt illi l-ahhar kriterju huwa kriterju illi tadopera l-Qorti Ewropea sabiex tivverifika jekk decizjoni ta' grati lokali jivvjolawx l-Art 10 tal-Konvenzjoni Ewropeja jew le, l-ewwel hames kriterji huma tali illi anke dina l-Qorti tista tapplikahom fil-kaz odjern.

Ghandu jigi osservat ukoll illi, 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 **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem rimentent, ossija fil 21 ta' Ottubru 2014, dwar "value judgment" intqal is-segwent:

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-segwent:

"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."

Dwar 'fair comment', imbghad, **Gatley on Libel and Slander** jghid:

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.

Ikkunsidrat

Jirrizulta mhux ikkontestat illi r-rikorrent huwa persuna pubblika u, certament fiz-zmien illi nkiteb l-artikolu meritu tal-kawza odjerna, kien ukoll persuna involuta fil-qasam tal-politika. Ghalhekk, bhala persuna politika, ghandu jkun soggett ghall-livell ta' kritika oghla minn dik permessibbli kemm lill-persuna li ghandha kariga pubblika u, aktar u aktar, mic-cittadin komuni.

Il-Qorti tosserva illi, la darba persuna tkun hadet d-decizjoni konxja illi tidhol fl-arena politika u tiggieled ghad-drittijiet illi hija temmen u thaddan kif ukoll tikkumbatti u targumenta kontra dak illi hija tqis illi huwa inaccettabbli ghas-socjeta li huwa jirrappresenta, allura l-istess persuna ghandha tkun konxja ukoll tal-fatt illi, talli qieghda taghti tali servizz lis-socjeta, hija ser tkun skrutizzata fid-dettall dwar kull azzjoni u decizjoni illi tiehu, liema skrutinju u kritika tista tkun, f'certi mument, anke harxa u iebsa - dak huwa rikjest minn socjeta demokratika illi thaddan il-liberta' ta' l-espressjoni u d-dritt illi kullhadd ghandu d-dritt li jsemma lehn u minghajr biza'.

Il-Qorti tosserva wkoll illi tali fatt, li persuna pubblika tigi skrutinizzata dejjem fl-azzjonijiet taghha, hija ukoll necessarja sabiex jigi assikurat illi tali persuna, li tkun giet eletta mill-poplu, tahdem verament fl-interessi tas-socjeta in generali u topera fl-ambitu ta' dak illi tkun wieghdet lill-poplu illi tali persuna kkonvinca sabiex jeleggieh sabiex jirrappresentahom. Dana huwa mehtieg peress li huwa tali skrutinju li jassikura illi, meta persuna politika ma toperax fl-ambitu ta' dak illi wieghdet, allura tista tigi kritikata, anke b'mod harxa, u avzata mill-poplu u rapprezentanti ohra ta' l-istess poplu, illi ma hijiex qieghda topera fl-ambitu ta' dak minnha imwieghed.

Din hija il-principju kardinali illi jiddistingwi d-demokrazija minn tmexxijiet differenti, bhalma huma dittatura u despotizmu, u dan ghandu jitqies bhala wiehed mill-pilastri illi fuqu pajjizna huwa mibni, liema pilastru ghandu jigi protett u msahhah, u certament huma biss l-Qrati illi jistghu jassikuraw li dina tigi protetta kif jenhtieg.

Ikkunsidrat

Jirrizulta mhux kontradett, illi r-rikorrenti, waqt illi kien ghadu Kunsullier tal-Partit Nazzjonalista fi hdan il-Kunsill Lokali ta' Tas-Sliema, ghazel illi jirrirenzja mill-Partit Nazzjonalista u beda jahdem attivament ghall-Partit Laburista tant illi, fatt mhux kontradett mir-rikorrenti u li hareg anke mill-kontenut ta' l-artikolu illi huwa qieghed jilmenta dwarhom, huwa kien l-awtur ta' ktieb dwar Dr Joseph Muscat, dak iz-zmien Kap tal-Opposizzjoni, u li intuza fil-kampanja elettorali illi wasslet sabiex il-Partit Laburista gie elett sabiex imexxi l-pajjiz.

Jirrizulta mhux kontradett ukoll illi l-fatt li r-rikorrenti ghazel illi jbiddel l-alleanza tieghu minn mal-Partit Nazzjonalista ghal mal-Partit Laburista wasslet ghal kritika varja u harxa, partikolarment da parte tal-Partit Nazzjonalista, illi hassewhom traduti bl-azzjoni illi kien ghamel ir-rikorrent, liema azzjoni, madanakollu, huwa kellu kull dritt illi jaghmel bhala cittadin liberu f'demokrazija bhalma hija dik Maltija.

Ikkunsidrat

Jirrizulta, ukoll mhux kontradett, illi fuq l-hekk imsejjha '*social media*', kif jidher kemm mid-dokumentazzjoni kif ukoll mix-xhieda prodotta, inkluz tar-rikorrenti, gew ccirkolati recordings ta' laqghat illi fihom kien presenti ir-rikorrenti flimkien ma' terzi persuni involuti fil-Kunsill Lokali ta' Tas-Sliema.

Jirrizulta, di fatti, illi f'wiehed mir-recordings, illi ma gie bl-ebda mod kontradett mir-rikorrent, jinghad illi r-rikorrenti, wara kummenti ta' rabja illi ghamlet Dr Joanna Gonzi lejn zewgt kunsulliera ohra, wiehed tal-Partit Nazzjonalista u iehor tal-Partit Laburista, fejn qalet illi tixhiet toqtolhom, fejn ir-rikorrent ghadha s-segwenti kumment: - "*easier to hit them with a big hammer*". Dana jirrizulta wkoll fl-atti ta' proceduri kriminali illi ttiehdu kontra z-zewgt kunsulliera illi dwarhom kienu qed jinghadu l-kummenti, u dana kif irrappurtat fil-media lokal u mhux kontradett mir-rikorrenti.

Jirrizulta, ghalhekk, illi, mument minnhom, ir-rikorrent jidher illi ghamel kumment fil-konfront ta' kollegi tieghu tal-Kunsill Lokali kif ukoll ta' l-istess Partit, liema kumment huwa soggett ghall-interpretazzjonijiet varji, inkluz dawk illi wasslu ghalih l-intimati fil-pubblikazzjoni meritu tal-kawza odjerna, ossija "*Backstabbing your own colleagues pays off - today he is the face of new Labour and honorary editor of the great Leader's book*".

Ikkunsidrat

Jirrizulta, kif indikat aktar il-fuq, illi la r-rikorrenti u wisq anqas l-intimati ma kienu f'pusizzjoni illi jippresentaw jew jidentifikaw id-diskussjonijiet illi saru u gew rekordjati u mqieghda fuq il-media socjali ghall beneficju tal-pubbliku in generali.

Jirrizulta, di piu, illi l-intimati ma kellhom ebda prova illi attwalment kien ir-rikorrent illi ghamel tali recordings u ir-rikorrent, da parte tieghu, jichad illi huwa qatt ghamel tali recordings u zied jghid is-segwenti dwar tali allegazzjonijiet ta' recordings:

"Jiena, minn naha tieghu, ma kellix ghalfejn noqghod naghmel recordings ghax mhux fl-istil tieghi." (fol 19)

Jirrizulta, madanakollu, illi Dr Joanna Gonzi, illi kienet is-Sindku tal-Kunsill Lokali ta' Tas-Sliema meta r-rikorrent kien il-Vici Sindku ta' l-istess lokalita, u meta kien hemm hawna kwistjonijiet serji illi kienu spiccaw irrappurtati fil-media lokal, fix-xhieda taghha tghid illi hija ghandha suspetti f'min izda ma setghetx tindikah cament. Madanakollu, l-istess Dr Joanna Gonzi, tkompli tghid is-segwenti:

"Jiena li nista nghid huwa li fl-ahhar ta' din il-laqgha kontroversjali li kellna bejnietna (li kienet tirrigwarda jekk jintghazilx Segretarju Ezekuttiv li jhaddan twemmin Laburista minhabba f'certa dubji illi l-istess Dr Gonzi kellha) fejn tlewwimna sew, Cyrus Engerer qalli "jien irrekordjajt din il-laqgha u issa ser nuzaha kontra tieghek"."

Jirrizulta wkoll illi, dejjem skond Dr Joanna Gonzi, wiehed mir-recordings illi ssemma fuq is-'*social media*' u li huwa fuq ikkwotat aktar 'l fuq stante illi kienu jiffurmaw parti minn proceduri kriminali, fejn ir-rikorrent jaghmel referenza ghal martel u Dr Gonzi tghid illi triq toqtol xi kunsulliera, dawna l-kliem intqalu waqt laqgha informali, fid-dar personali taghha, illi ghaliha kien ir-rikorrenti u terza

persuna, u ghalhekk seta kien biss wiehed minn dawna z-zewgt persuni illi ghamel ir-recording li eventwalment kien imxandar.

Ikkunsidrat

Jirrizulta, mill assjem tal-provi, illi ghalkemm prova diretta illi tali recordings saru da parte tar-rikorrenti ma tesistix, stante illi ma huwiex possibbli tirrintraccja min fizikament ghamel tali recordings, mix-xhieda prodotta mill-intimati, il-Qorti thoss illi hemm bizzejjed provi illi jindikaw li huwa sostanzjalment possibbli li tali recordings saru minnu.

Jirrizulta wkoll illi kien r-rikorrent stess illi ssuggerixxa sabiex lill-persuni li kienu ta' l-istess partit tieghu, jeliminahom billi jaghtihom daqqa ta' martell - ghalhekk, il-kumment "*backstabbing your colleague pays off*" huwa justifikabbli in vista ta' tali suggeriment illi jidher illi ghamel ir-rikorrent.

Jirrizulta, mhux kkontestat, finalment, illi r-rikorrenti, f'mument minnhom, biddel l-alleanza tieghu minn mal-Partit Nazzjonalista ghal mal-Partit Laburista u lanqas ma huwa kkontestat illi l-istess rikorrent kien l-editor ta' ktieb dwar Dr Joseph Muscat - ghalhekk, tali kumment jidher illi huwa gustifikat wkoll.

Ikkunsidrat

Il-Qorti, ghal darba ohra, ma tistax ma tirrilevax, kif gia fuq spjegat aktar fid-dettall, illi fil-kamp politiku, persuna hemm involuta ghandha tkun lesta illi taqla kummenti negattivi u horox fil-konfront taghha u huwa biss meta tali kummenti jaghtu x'jifhem lill-qarrej in generali li tali persuna kienet direttament involuta f'attivita' kriminali illi huma ghandhom jirrikorru lill-Qrati.

Il-Qorti ma tistax ma tinnotax illi flok mar-rikorrent ghazel illi jikkumbatti l-allegazzjonijiet illi kienu saru fi-konfront tieghu gewwa l-arena politika illi fiha huwa kien involut billi jikkonfronta pubblikament lill min kien qed jattakkah u jiffaccjah direttament, huwa ghazel illi jkaxkar tali kwistjoni gewwa l-arena legali tal-Qrati u juza l-Qrati w il-Ligi sabiex jipprotegi lill-nniffsu u jipprova jbezza lill min kien qieghed iqajjem allegazzjonijiet kontra tieghu bil-konsegwenzi legali, meta attwalment huwa seta jipprotegi lill-nniffsu facilment mod iehor, haga illi huwa qatt ma ghamel ghax ghazel illi minnufih jiftah kawza.

Ghal darba ohra, il-Qorti taghmilha cara illi l-Ligi w il-Qrati qieghdin hemm sabiex jipprotegu lill kull cittadin minn ingustizzji u hsarat illi jista jsirilhom, izda meta cittadin jaghzel illi jidhol fl-arena politika, huwa ghandu jkun lest jiggieled ghal dak illi jemmen, u dana fl-arena politika u mhux fl-areni gudizjarji.

Kif qalet dina l-Qorti, fil-kawza '**Jesmond Mugliette vs Alfred Sant**' deciza fl-10 ta' Marzu 2014, gia kellha l-opportunita illi taghmel osservazzjonijiet simili, fejn intqal is-segwent:

Din il-Qorti thoss illi wasal il-mument illi tali regola (tal-livell ta' kritika) titwessa aktar fis-sens illi meta jkun hemm dibattitu politiku ghaddej bejn politici, tali livell ta' kritika ghadha interpretata f'livell aktar wiesgha minn dak ipprovdut hawn fuq, peress illi d-dibattitu politiku huwa l-pern ta' socjeta demokratika u, ghalhekk ghandha tigi protetta u stimolata minn dina l-Qorti u mhux imxekkla fl-operat taghha.

Konkluzjoni

Wara illi semgħet it-trattazzjoni ta' l-abbli difensuri tal-partijiet.

Tgħaddi biex taqta u tiddeciedi l-kaz billi:

Tilqa l-eccezzjonijiet kollha tal-intimati,

Tichad it-talbiet attrici.

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

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur