



# FIL-QORTI TAL-MAGISTRATI TA' MALTA

## MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn tlethax (13) ta' Gunju 2016

Rikors Numru 206/12 FDP

**L-Arkitett u Engineer Civili Anthony Bezzina  
(486069M)**

vs

**Josef Caruana  
(150573M)**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit 18 ta' Gunju 2012 fejn ir-rikorrent ghamel referenza ghall-artikolu illi dher fil-harga tal-gurnal l-Orizzont tat 30 ta' Mejju 2012 intitolat '**Ebda investigazzjoni tal-Pulizija s'issa fuq il-kaz Toni Bezzina**' u talab lill-Qorti tiddikjara tali artikolu bhala malafamanti u libelluz fil-konfront tieghu u ghalhekk tikkundanna lill-intimat, bhala editur, ihallsu danni a tenur ta' l-Artikolu 28 tal-Kap 248.

Rat l-artikolu, bla data, riprodott mir-rikorrenti mis-sit elettroniku tal-gazzetta Orizzont, illi kien jghid is-segwenti:

### ***Ebda investigazzjoni tal-Pulizija s'issa fuq il-kaz Toni Bezzina***

*Il-Perit Toni Bezzina, Perit tal-Gvern u kandidat ta' GonziPN fuq il-Hames distrett, li skond inkjesta talab haddiema tal-Gvern jiffirmaw affidavit li ma ghamlux xoghol fuq il-kazin Nazzjonalista taz-Zurrieq meta fil-fatt kienu ghamluh, ghadu mhux qed jigi investigat mill-Pulizija.*

*L-Orizzont jista jizvela li waqt l-inkjesta, u taht gurament, il-Perit Bezzina ammetta li kien hu li pprepara d-dikjarazzjoni ghall-haddiema u kien hu li ha lill-istess haddiema biex jaghmlu l-affidavit.*

*Minkejja li din l-inkjesta inzammet interna, jidher li ma kien hemm ebda investigazzjoni tal-Pulizija sa issa biex jidentifikaw jekk kienx hemm ksur tal-ligi f'dan l-agir.*

*L-inkjesta sabet li dawn il-haddiema ghamlu x-xoghol b'mod volotarju barra l-hin tax-xoghol. Imma fatti zvelati fi-gazzetta Kullhadd urew li dan ix-xoghol sar matul il-jum u l-haddiema marru fuq il-post bil-vann tax-xoghol.*

*Wara li dan il-kaz gie zvelat, il-Perit Bezzina baghat ghall-haddiema, ippreparalhom dikjarazzjoni li talabhom jiffirmaw.*

*L-ghada regha baghat ghall-haddiema fl-ufficju tieghu Beltissebh u hadhom bil-karozza tieghu ghand nutar biex isir affidavit.*

*S'issa la l-Gvern ma ha passi fuq il-Perit Bezzina bhala Perit tal-Gvern u lanqas il-PN ma ha passi fuq l-istess Perit bhala kandidat u President tal-kazin taz-Zurrieq.*

Rat ir-risposta ta' l-intimat ippresentat fit-2 ta' Lulju 2012 fejn sahaq illi l-kitba kienet fuq fatti veri u kien ezercizzju tal-liberta' ta' l-espressjoni filwaqt illi sahaq li kien dmir tal-gurnalist li jgharraf lill-pubbliku b'ahbarjiet u grajjiet ta' interess pubbliku.

Rat illi fid-9 ta' Lulju 2012 il-partijiet qablu illi l-kawza odjerna timxi flimkien mal-kawza Rikors Nru 207/12 fl-ismijiet '**Arkitett u Ingeener Anthony Bezzina vs Dr Toni Abela**' stante illi jirrigwardaw l-istess meritu w il-provi migbura f'dik il-kawza japplikaw ghall-kawza odjerna wkoll.

Rat l-affidavit tar-rikorrent il-**Perit Anthony Bezzina** ippresentat fid-19 ta' April 2013.

Rat illi fl-1 ta' Lulju 2013, il-Qorti iddikjarat il-provi rikorrenti bhala maghluqa.

Semghet ix-xhieda ta' **Josef Caruana** moghtija fil 25 ta' Ottubru 2013 u fit 28 ta' Marzu 2014 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Joseph Callus**, Segretarju Permanenti fi hdan il-Ministeru tat-Trasport u Infrastruttura moghtija fis 26 ta' Marzu 2015 u rat id-dokument minnu ppresentat u sigillat minn dina l-Qorti sabiex ikun accessibbli biss lill-partijiet.

Semghet ix-xhieda ta' **Charles Curmi**, *supervisor* fi hdan il-Public Works Division, moghtija fis 26 ta' Marzu 2015.

Semghet ix-xhieda ta' **Paul Inguanez**, *operative* ossija '*stone dresser*' fi hdan il-Public Works Division, moghtija fis 26 ta' Marzu 2015.

Rat illi fit 28 ta' Mejju 2015 l-intimat iddikjara illi ma kellux aktar provi x'jippresenta.

Rat illi fis 16 ta' Novembru 2015 ir-rikorrenti ippresenta s-sottomissjonijiet bil-miktub.

Rat illi fis 7 ta' Jannar 2016 l-intimat ippresenta s-sottomissjonijiet bil-miktub.

Rat illi fit 28 ta' Jannar 2016 il-kawza giet differita ghas-sentenza.

Rat illi fil 11 ta' April 2016, gie rilevat li stante illi l-kawza odjerna kienet miexja flimkien mal-kawza 207/12, illi kienet ghadha ghal finali trattazzjoni, il-kawza giet differita ghas-sentenza ghat 13 ta' Gunju 2016 wara illi anke il-kawza 207/12 kienet differita ghas-sentenza wkoll ghal dakinhar.

Rat illi fit-6 ta' Gunju 2016, ir-rikorrenti ippresenta rikors sabiex jigi ammess fl-atti ta' dina l-kawza x-xhieda ta' Donald Borg moghtija fil-kawza *'Il-Perit Anthony Bezzina vs Dr Joseph Muscat'*, liema talba gie michuda minn dina l-Qorti peress illi l-istadju tal-gbir tal-provi kien ilu maghluq w il-kawza kienet differita ghas-sentenza.

## **Ikkunsidrat**

Jirrizulta illi r-rikorrent huwa Perit impjegat fil-Ministeru dak iz-zmien imsejjah Ministeru ghar-Rizorsi u l-Affarjiet Rurali, maghruf ukoll bhala 'Public Works Department' u f'Marzu tas-sena 2012, ir-rikorrent kien ukoll il-Kap tar-Rapid Intervention Unit fi hdan l-istess Dipartiment.

Jirrizulta wkoll illi r-rikorrent kien kandidat ghall-Elezzjoni Generali tas-sena 2013, f'liema elezzjoni huwa gie sussegwentement elett bhala Membru tal-Parlament, u f'Marzu 2012, huwa kien il-President tal-Kumitat Sezzjonali tal-Partit Nazzjonalista fiz-Zurrieq.

Jirrizulta illi r-rikorrent, bhala President tal-Kumitat Sezzjonali tal-Partit Nazzjonalista taz-Zurrieq, kellu jiehu hsieb il-Kazin tal-Partit Nazzjonalista li kien hemm fiz-Zurrieq, liema kazin kellu bzonn tibjida f'uhud mill-kmamar.

Jirrizulta, di fatti, illi hekk kif il-Perit Bezzina kien jaf illi kellhom isiru xoghlijiet fil-propjeta privata ossija il-Kazin Nazzjonalista taz-Zurrieq, f'Marzu 2012, f'it jiem qabel l-Elezzjoni tal-Kunsilli Lokali, huwa talab lill-foreman tad-Dipartiment tieghu, Joseph Borda, sabiex isiblu xi haddiema li hemm fid-Dipartiment li jkunu lesti sabiex, wara il-hin tax-xoghol, imorru jbajjdu il-Kazin Nazzjonalista taz-Zurrieq.

Jirrizulta illi Joseph Borda sussegwentement qallu illi sab tlett persuni u ghalhekk il-Perit Bezzina ghamel l-arrangement necessarji sabiex dawna l-impjegati jmorru jaghmlu x-xoghlijiet mehtiega.

Jirrizulta illi l-haddiema marru jaghmlu x-xoghol, u uzaw materjal provdut minnu, u meta eventwalment staqsa lill Joseph Borda kemm kelli jaghti lill-haddiema ta' xogholhom, Borda qallu illi l-impjegati ma riedux jithallsu tax-xoghol illi ghamlu.

Jirrizulta illi sussegwentement, il-gazzetta Kullhadd harget storja dwar dawna x-xoghlijiet u li dawna dawna saru waqt il-hin tax-xoghol, u ntab sabiex jaghti spjegazzjoni ta' dana kollu mis-superjuri tieghu.

Jirrizulta ghalhekk illi huwa talab lit-tlett haddiema sabiex jaghmlu dikjarazzjoni fejn jikkonfermaw illi huma ghamlu x-xoghol gewwa il-Kazin Nazzjonalista taz-Zurrieq wara il-hin tax-xoghol.

Jirrizulta illi sussegwentement saret inkjesta fi hdan il-Ministeru ghar-Rizorsi u l-Affarjiet Rurali.

Jirrizulta dawna l-fatti kif fuq deskritti huma bbazati fuq dak li stqarr ir-rikorrent fl-affidavit tieghu stess.

## Ikkunsidrat

Jirrizulta, mix-xhieda ta' Charles Curmi, wiehed mit-tlett haddiema illi gew mitluba jmorru jaghmlu x-xoghol gewwa il-Kazin Nazzjonalista ta' Zurrieq, illi waqt illi huwa kien fuq il-lant tax-xoghol gewwa Ta' Xbiex, gie fuqu Joseph Borda u gharrfu illi wara nofsinhar Curmi kellu jiehu zewgt haddiema mieghu gewwa Zurrieq biex jaghmlu bicca xoghol "*ghal Perit*", u ma kellhomx imorru hemm bil-vann tax-xoghol.

Jirrizulta illi Borda qallu li, hekk kif jaslu vicin taz-Zurrieq, Curmi kellu jcempillu u jghidlu fejn imur.

Jirrizulta illi wara nofsinhar, Charles Curmi ha zewgt persuni ohra mieghu u wara illi tkellem ma' Borda, dana tah id-direzzjonjiet mehtiega u saru jafu illi x-xoghol kellu jsir gewwa il-Kazin Nazzjonalista taz-Zurrieq.

Jirrizulta illi x-xoghol rikjest dam ghaddej, skond Curmi, tlett ijiem, liema xoghol dejjem sar wara nofsinhar.

Jirrizulta, skond Curmi, illi sussegwentement, meta l-istorja saret pubblika, huwa intlab minn Borda sabiex jiffirma karta, liema karta Curmi jishaq huwa ma kienx qed jaqbel mal-kontenut tieghu, peress illi kien qieghed jinghad illi huma marru minn rajhom jaghmlu x-xoghol gewwa l-Kazin Nazzjonalista taz-Zurrieq u Curmi kien qed jinsisti illi huwa mar hemm ghax qallu Borda biex imur hemm, izda eventwalment Bord gieghlu jiffirma d-dokument.

Jirrizulta wkoll illi Borda beda jassikura lill-Curmi li ma kellux jinkwieta fuq dana d-dokument. Madanakollu, darba minnhom, waqt il-hin tax-xoghol, Borda ha lill-Curmi ghand Nutar gewwa l-Belt sabiex jahlef il-kontenut tal-affidavit bil-gurament

## Ikkunsidrat

Jirrizulta illi skond Paul Inguanez, wiehed miz-zewgt haddiema illi kienu marru flimkien ma' Curmi, Joseph Borda iltaqa' mat-tlett impjegati u hadhom il-Kazin Nazjonalista u x-xoghol kollu sar waqt il-hinijiet tax-xoghol, peress illi kemm Paul Inguanez u Charles Curmi t-tnejn ikkonfermaw illi meta marru x-xoghol kien ghadu il-hin tax-xitwa, fejn jispickaw fil hamsa u kwart ta' filghaxija.

Jirrizulta illi Paul Inguanez ikkonferma illi Joseph Borda hadu ghand nutar, in-Nutar Joseph Darmanin, u dana lestilu affidavit, esebit bhala Dok B mar-rapport tal-Inkjesta, illi kien jghid hekk:

*"Jiena, Paul Inguanez ..... niddikjara u nikkonferma bil-gurament illi ix-xoghol ta' tibjid minnu maghmul fil-kamra tal-bejn tal-Kazin tal-Partit Nazzjonalista taz-Zurrieq, kien gie minnu maghmul minn jheddi, minghajr hadd ma gieghlni, b'mod volontarju u minghajr hlas u t-tibjid sar kollu wara il-hin tax-xoghol"*

Jirrizulta illi Paul Inguanez kien qieghed jibza jiffirma tali dokument, anke ghand in-Nutar Darmanin, illi koincidentalment huwa l-istess Nutar illi halef l-affidavit tar-rikorrent, izda eventwalment fuq insidenza ta' Joseph Borda, huwa iffirma l-istess.

Jirrizulta illi lill Charles Curmi sarlu affidavit identiku, illi anke hu ma riedx jiffirma, kif fuq ahjar spjegat, izda eventwalment, fuq insidenza ta' Joseph Borda, iffirmah.

Jirrizulta illi l-istess sar ukoll lit-tielet haddiem, Mario Bugeja, illi ma ttellax jixhed quddiem dina l-Qorti.

## **Ikkunsidrat**

Jirrizulta illi l-kaz kollu gie kkunsidrat u deliberat fid-dettall anke mill-Ministeru ghar-Rizorsi u l-Affarjiet Rurali, liema Ministeru, inizzjalment oggezzjona illi jesebixxi tali dokument, izda liema rapport u dokumenti mieghu annessi gew eventwalment hekk esebiti fuq ordni tal-Qorti.

Jirrizulta illi minn tali rapport, irrizulta li x-xoghol illi sar fil-Kazin Nazzjonalista taz-Zurrieq sar gimgha qabel l-Elezzjonijiet tal-Kunsilli Lokali u ghal dana ix-xoghol huma marru bil-karozza tal-kiri illi d-Dipartiment kien qieghed juza dak iz-zmien.

Jirrizulta wkoll illi t-tlett impjegati kienu mgħarrfa illi huma kienu ser imorru jagħmlu bicca xoghol privata fuq talba tal-Perit, li kien ir-rikorrent, u li gew mitluba sabiex ibiddu hwejjighom qabel ma jmorru hemm.

Jirrizulta illi, ftit wara li sar ix-xoghol, l-istorja dehret fil-gazzetta lokali, u t-tlett haddiema gew lkoll miltuba minn Borda sabiex imorru għwa l-ufficju ta' r-rikorrent, il-Perit Bezzina, u hekk kif marru hemm, il-Perit Bezzina tahom ittra li t-tlieta li huma kellhom jiffirmaw.

Jirrizulta illi dana id-dokument, datat 23 ta' April 2012, kien jghid is-segwent:

*"Lil min tikkoncerna*

*Ahna hawn taht iffirmiti niddikjaraw illi x-xoghol ta' tibjid ta' kamra fuq il-bejn tal-Kazin tal-PN iz-Zurrieq għamilnieh minn jhednam wara il-hin twx-xoghol u b'mod volontarju."*

Jirrizulta illi dana d-dokument gie iffirmit konguntivament mit-tlett impjegati stess, ossija Charles Curmi, Paul Inguanez u Mario Bugeja

Jirrizulta illi fis-26 ta' April 2012, it-tlett haddiema sussegwentement ittiehdu għand in-Nutar Joseph Darmanin, fejn skond ir-rapport tal-Inkjesta, kien presenti wkoll l-istess Perit rikorrent, illi lkoll iffirmit affidavit identitku, kif fuq ġia deskritt, izda din id-darba separatament.

Jirrizulta, madanakollu, illi sussegwentement, Paul Inguanez flimkien ma' haddiem iehor illi ma xehedx quddiem dina l-Qorti, Mario Bugeja, regghu għamlu affidavit iehor, din id-darba minn rajhom, fejn cahdu il-kontenut tal-affidavit mahluf quddiem in-Nutar Joseph Darmanin, u saħqu illi huma kien marru jahdmu fejn kien ordnal jmur Joseph Borda u ma marrux hemm volontarjament

## **Ikkunsidrat**

Jirrizulta illi skond ir-rapport tal-Inkjesta, x-xoghol sar wara il-hin tax-xoghol tal-impjegati, peress illi kkonkludiet illi dawna l-haddiema kienu jagħmlu xoghol imsejjah 'bl-imqjeta' u l-hinijet tax-xoghol tagħhom huwa bejn is 7 ta filghodu u is-1.30 ta' wara nofsinhar.

Jirrizulta, madanakollu, illi l-haddiema gew imgieghla jiffirmit dokument, kemm quddiem ir-rikorrent, kif ukoll quddiem in-Nutar tar-rikorrenti, u għal dan il-ghan ikun opportun illi tigi kkwotata silta tal-konkluzjonijet tar-rapport fejn kienet tirrigwarda ir-rikjesta magħmulha lill-Bord

"to investigate the allegation made by workers that they were ordered to sign a declaration by their superiors"

Il-Bord, di fatti, ghamel is-segweni osservazzjonijiet:

*"Fir-rigward tad-dikjarazzjoni li giet iffirmata mit-tliet haddiema fl-ufficju tal-Perit Bezzina, il-Bord ihoos li fil-waqt li l-protagonisti superjuri, jigifieri Borda u l-Perit, taw kaz li jispegaw lill-haddiema x'kien hemm miktub fid-dikjarazzjoni, minn naha taghhom, ix-xhieda tal-haddiema turi li huma hassewhom taht pressjoni biex jiffirmaw imbilli gew imqabba jaghmlu hemm mis-superjuri taghhom. Mill-mod kif xehdu, u il-biza li wrew anke waqt ix-xhieda taghhom, jidher car lill-Bord li dawn il-haddiema jibzghu mis-Superjuri taghhom u allura huma hassewhom kostretti biex jiffirmaw id-dikjarazzjoni. Ma jfissirx b'dan li s-superjuri taghhom kellhom xi intenzjoni li jbezzghuom.*

*Il-pressjoni minn naha tas-Sur Borda harget b'mod partikolari meta fil-kaz ta' wiehed mill-haddiema li dak inhar inzerta kellu l-funeral ta' ommu, li dan talbu sabiex ikun lest ha jitla jiffirma d-dikjarazzjoni ezatti wara l-funeral t'ommu - kif fil-fatt sar."*

Din il-Qorti thoss ukoll illi ghandha taghmel referenza ghall-osservazzjonijiet korreti u mirquma illi ghamlu l-membri tal-Bord fl-ahhar tar-rapport, fejn dawna ghamlu s-segweni osservazzjonijiet:

- 1. Il-Bord jidhirli li fid-dawl tal-fatti li hargu mill-investigazzjoni, ghandu jkun muri bic-car lil haddiema kollha tal-Ministeru ghar-Rizorsi u l-Affarjiet Rurali x'hinhuma l-hinijiet tax-xoghol normali meta jkun kaz ta' mqieta. Dan sabiex l-aspettattivi ta' kullhadd ikunu cari kristall*
- 2. Il-Bord ihoos ukoll, bl-gherf tal-harsien b'lura, li haddiema tal-Ministeru m'ghandhomx jintalbu xoghol privat mill-istess superjuri taghhom, sabiex l-aspettattivi taz-zewgt nahat qatt ma jkun f'kunflitt minhabba tahlit ta' rwoli u nuqqas ta' kjarazza li tista tirrizulta minn tali cirkustanza.*
- 3. Il-Bord jirrikmanda sadanittant li haddiema vulnerabli fi hdan il-Ministeru ghandhom jigu mharrga f'kif huma jistghu ikunu aktar assertivi fuq il-post tax-xoghll sabiex jigu evitati sitwazzjonijiet imbarazzanti ghaz-zewgt nahat (superjuri u subordinati)*

## **Ikkunsidrat**

Jirrizulta illi r-rikorrent, fix-xhieda tieghu, sahaq illi huwa hassu libellat mill-fatt illi l-artikolist jishaq illi l-haddiema marru jaghmlu x-xoghol ta' tibjid fil-Kazin Nazzjonalista taz-Zurrieq waqt il-hin tax-xoghol taghhom.

Jirrizulta illi l-intimat, da parte tieghu, jqajjem bhala eccezzjoni dik tal-verita' tal-fatti kif ukoll illi li dak minnu miktub huwa d-dmir illi huwa ghandu, bhala gurnalist, li jgharraf lill-pubbliku b'ahbarjiet u grajjiet ta' interess pubbliku.

Ikun ghalhekk opportun illi dina l-Qorti tikkunsidra xi punti dwar id-dritt tal-gurnalist illi jxandar ahbarjiet lill-pubbliku.

Fuq id-dritt tal-gurnalist illi jirrapporta dak li jidhirli 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, il-Qorti ghamlet 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-segwent:

*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-segwent:

*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.*

Il-posizzjoni importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni ghandha, madanakollu, 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.*

In vista ta' dawnha l-fatti, il-Qorti ghandha tiehu 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*".

Dawnha 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.*

Finalment, in vista tal-fatt illi r-rikorrent huwa persuna politika, dwar il-livell ta' kritika li politiku tista ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza ***Ligens vs Austria***, u abbraccjata mill-Qorti Maltin, intqal illi:-

*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.*

**Ikkunsidrat**

Minn provi migbura quddiem dina l-Qorti, jirrizultaw is-segwenti fatti:

- F'Marzu 2012, ir-rikorrent il-Perit Anthony Bezzina kien il-Kap tar-Rapid Intervention Unit fi hdan il-Ministeru ghar-Rizorsi u Affarjiet Rurali
- F'Marzu 2012, ir-rikorrent kien ukoll President tal-Kumitat Sezzjonali tal-Partit Nazzjonalista taz-Zurrieq.
- F'Marzu 2012, ftit jiem qabel l-Elezzjonjiet tal-Kunsilli Lokali, r-rikorrent kien talab lill Joseph Borda, Principal Technical Officer fi hdan id-Dipartiment tieghu, illi ghalhekk kien jaqa tahtu, sabiex isiblu tlett haddiema bie ximorru jaghmlu xoghol ta' tibjid gewwa il-Kazin tal-Partit Nazzjonalista.

- Joseph Borda, mexa fuq l-istruzzjonjiet tieghu u avvicina tlett persuni, ossija Charles Curmi, Paul Inguanez u Mario Bugeja waqt illi dawna kienu fuq il-lant tax-xoghol u qalilhom illi wara nofisnhar kellhom bicca xoghol gewwa z-Zurrieq.
- It-tlett impjegati, Charles Curmi, Paul Inguanez u Mario Bugeja, meta spiccaw fuq il-lant tax-xoghol taghhom gewwa Ta Xbiex, qabdu il-karozza illi kienu biha u marru z-Zurrieq sabiex jistennew lill Joseph Borda.
- Gewwa z-Zurrieq, Joseph Borda Itaqa' maghhom u hadhom gewwa il-Kazin Nazzjonalista fejn imbgħad it-tlett impjegati qattghu jumejn jew tlieta jahdmu fil-post wara nofsinhar.
- Jiem wara li tlesta x-xoghol, l-istorja giet rrapportata fuq il-media lokali.
- Ir-rikorrent il-Perit Anthony Bezzina u Joseph Borda sejjhu lit-tlett impjegati fl-ufficju tal-Perit Bezzina u għadew dokument redatt ill-Perit Anthony Bezzina li eventwalment it-tlett haddiema gew mitluba jiffirmaw.
- Joseph Borda, f'it jiem wara, ha lit-tlett haddiema waqt il-hin tax-xoghol, għand in-Nutar Joseph Darmanin, l-istess Nutar illi ffirmaw l-affidavit tar-rikorrenti fil-kawza odjerna, fejn, fil-presenza ta' Joseph Borda u l-istess rikorrent, sarilhom affidavit iehor illi t-tlett haddiema gew mitluba sabiex jikkonfermaw bil-gurament.
- Jirrizulta illi t-tlett haddiema lkoll kemm huma ma riedux jiffirmaw dana l-affidavit izda eventwalment gew konvinti jagħmlu dan.
- Jirrizulta illi sussegwentement, wiehed mill-haddiema, Paul Inguanez, reggha għamel affidavit iehor, minn jheddu, fejn caħad dak kollu illi kien hemm fl-affidavit illi kien hadu biex jiffirma Joseph Borda għand in-Nutar Joseph Darmanin.

Jirrizulta, mix-xhieda tar-rikorrenti, illi wahda mill-affarjiet illi dwarha huwa jilmenta l-aktar kien illi kien qed jigi allegat li l-haddiema marru jahdmu gewwa il-Kazin tal-Partit Nazzjonalista waqt il-hin tax-xoghol.

Jirrizulta, di fatti, illi huwa jichad illi dana kien hekk u di fatti, anke fir-Rapport ta' Investigazzjoni, gie konkluz illi l-haddiema ittiehdu jahdmu gewwa l-Kazin tal-Partit Nazzjonalista wara il-hin tax-xoghol taghhom, ossija wara nofsinhar.

Jirrizulta, madanakollu, illi quddiem dina l-Qorti, kemm Charles Curmi kif ukoll Paul Inguanez it-tnejn ikkonfermaw illi skond huma, l-hinijiet tax-xoghol taghhom kien, dak iz-zmien, sal-erbgha u nofs ta' wara nofsinhar, u għalhekk huma kienu qiesu illi kienu qed jahdmu gewwa il-Kazin Nazzjonalista taz-Zurrieq waqt il-hin tax-xoghol. L-istess għamel Mario Bugeja fl-affidavit anness mar-rapport tal-Inkjesta.

Jirrizulta illi dana jmur kontra dak illi qieghed jishaq ir-rikorrenti.

Jirrizulta, madanakollu, illi anke il-Bord ta' l-Investigazzjoni osserva tali inkonsistenza u fl-osservazzjonjiet tieghu kkonkludew illi l-Awtoritajiet għandhom jassikuraw illi l-haddiema li jahdmu bl-imqjeta ikunu indikat b'mod car il-hinijiet illi fihom huma obligata jahdmu, sabiex ikun car għal kullhadd.

Jirrizulta, ghalhekk, illi huwa minnu illi l-haddiema hassew li marru jahdmu gewwa il-Kazin Nazzjonalista taz-Zurrieq peress ill ghalihom huma kienu qed jaghmlu tali xoghol waqt il-hin tax-xoghol tagghom, kif del resto kkonfermaw quddiem dina l-Qorti.

## **Ikkunsidrat**

Jirrizulta, minn harsa lejn l-artikolu illi dwaru qieghed jilmenta ir-rikorrent, illi l-fatti kollha kif indikati ftali artikolu jirrizultaw ippruvati.

Jirrizulta, di fatti, illi l-haddiema marru ghax-xoghol fiz-Zurrieq bil-vann tax-xoghol illi kienu bieh, u jirrizulta kkonfermat mix-xhieda tal-haddiema stess, illi huma marru wara nofsinhar, u ghalhekk hassew li marru waqt il-hin tax-xoghol, kif inghad fl-artikolu.

Jirrizulta, ukoll, illi huwa minnu illi r-rikorrenti lestielhom dikjarazzjoni illi kellha tigi iffirmata mit-tlett haddiema.

Jirrizulta, finalment, ukoll ippruvat illi t-tlett haddiema ittiehdu waqt il-hin tax-xoghol ghand nutar tal-fiducja tar-rikorrenti, sabiex jikkonfermaw affidavit iehor preparat ghalihom bil-gurament.

Jirrizulta illi dawna l-fatti kollha gew ikkonfermat bil-gurament minn tnejn mit-tlett haddiema, peress illi t-tielet haddiem ma ttellax.

Jirrizulta, finalment, illi l-persuna illi setgha jikkorrobora l-posizzjoni mehudha mir-rikorrenti, ossija Joseph Borda, ma ttellax mir-rikorrent.

Jirrizulta, ghalhekk, illi l-fatt kif rappurtat fl-artikolu jirrizultaw ben ippruvati.

Jirrizulta, finalment, illi l-intimat kien qieghed jaqdi korrettement id-dmir tieghu ta' gurnalist meta rrapporta ahbar illi kienet tirrigwarda persuna pubblika, bhalma huwa ir-rikorrent, liema ahbar kienet certament ta' interess pubbliku, stante illi kienet tirriwgarda l-uzu ta' haddiema sudetti tar-rikorrent sabiex jaghmlu xoghol ta' manutenzjoni gewwa il-Kazin Nazzjonalista taz-Zurrieq, illi tieghu ir-rikorrent kien President.

Bhalma dejjem insistiet dina l-Qorti, il-gurnalist mhux biss ghandu d-dritt illi jxandar informazzjoni ta' tali tip, izda ghandu d-dmir illi jassikura illi l-poplu jkun jaf bl-azzjonijiet mehudha mill-politici illi jigu eletti mill-istess poplu u, sakemm tali informazzjoni tkun sostanzjalment korretta, dina ma tistax titqies bhala libelluza u malafamanti fil-konfront ta' min ihossu urtat biha.

## **Konkluzjoni**

Wara illi rat il-provi kif prodotti quddiemha

Wara illi rat is-sottomissjonijiet tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tilqa** l-eccezzjonijiet kollha ta' l-intimat,

**Tichad** it-talbiet attrici kif dedotti

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

**Magistrat Francesco Depasquale**

**Marisa Bugeja**  
**Deputat Registratur**