FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn sbatax (17) ta' Ottubru 2016

Rikors Numru 190/08 FDP

Natalino Fenech
(ID 2063M)

vs

Saviour Balzan
(ID 127263M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit-30 ta' April 2008 fejn, filwaqt illi ghamel referenza ghall-artikolu intitolat '*Gonzi's new way of doing politics at MEPA*' ppubblikat fil-gazzetta '**Maltatoday**' tal 20 ta' April 2008, talab lill dina l-Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tieghu u ghalhekk talab lill-Qorti tikkundanna lill-intimat, bhala editur tal-pubblikazzjoni, ihallus danni a tenur tal-Artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna (fol 21), partikolarment il-partijiet indikati mir-rikorrent, li kienu s-segwenti:

> *It came to me as a surprise when PBS announced that Joseph Muscat would not be contesting the Labour leadership battle. It was of course a big fat lie, and despite the fact that Muscat sent in a statement to Mr Natalino Fenech that it was not true, Mr Fenech went ahead and did what he had to do. We have to stop here for a minute. As everyone knows, Mr Fenech is not only someone who does not like Labour but he is also someone who specialises in spin.*
>
> ....

> *The spin concocted by Natalino Fenech favour, as we all know, George Abela. And Dom Fenech, as well all know, is blatantly campaigning for Dr Abela.*
>
> .....
>
> *You see, Natalino, as many people may now know, was a vehement opponent of hunting. He was also an author of a funny book about hunting that was full of inaccuracies and massive exagerations.*
>
> ....
>
> *On one occasion he got a Times journalist to ask me if I had ever eaten game when off in France. To which I informed the poor Roseanne Zammit to tell Natalino to sod off.*

Ra ir-risposta ta' l-intimat ippresentat fit-23 ta' Gunju 2008 li sahaq illi, filwaqt li r-rikorrent kellu jindika liema partijiet tal-artikolu kienu malafamanti, insista illi dak li qal ma huwa xejn aktar ghajr '*fair comment*' u dritt ta’ l-intimat li jikkummenta fuq materja in kwistjoni.

Rat ix-xhieda tar-rikorrenti **Dr Natalino Fenech** moghtija fis 27 ta' Ottubru 2009 u rat id-dokumentazzjoni minnu esebita, ossija l-artikolu meritu tal-kawza odjerna (fol 21).

Rat ix-xhieda tar-rikorrenti Dr Natalino Fenech moghtija fid 19 ta' Jannar 2010 u rat id-dokumentazzjoni minnu esebita.

Rat ix-xhieda tar-rikorrenti Dr Natalino Fenech moghtija fl 14 ta' April 2010 u rat id-dokumentazzjoni minnu esebita.

Rat illi fl-14 ta' April 2010 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Rat ix-xhieda ta’ **Saviour Balzan** moghtija fit 30 ta’ Novembru 2010.

Semghet ix-xhieda ta’ **Dr Joseph Muscat**, dak iz-zmien Kap tal-Opposizzjoni, moghtija fis 17 ta’ Settembru 2012.

Semghet ix-xhieda ta’ **Lino Farrugia**, Segretarju Generali tal-Federazzjoni Kaccaturi w Nassaba Konservazzjonisti, moghtija fis 16 ta’ Novembru 2012.

Semghet il-kontro ezami ta’ Dr Natalino Fenech moghtija fit 13 ta’ Gunju 2014.

Semghet ix-xhieda ta’ Saviour Balzan moghtija fit 13 ta’ Gunju 2014.

Semghet ix-xhieda ta’ **Joe Sultana**, li kien involut fl-ghaqda Malta Ornithological Society kemm bhala Segretarju kif ukoll bhala President ghal hafna snin, liema xhieda inghatat fis 26 ta’ Jannar 2015.

Rat l-affidavit ta’ **Joseph Mangion** ippresentata fil 11 ta’ Mejju 2015.

Rat illi fil 11 ta’ Mejju 2015 l-intimat iddikjara illi ma kellhux aktar provi x’jippresenta.

Semghet il-kontro ezami ta’ Joseph Mangion illi saret fit 22 ta’ Ottubru 2015.

Rat illi fl-4 ta' Frar 2016 r-rikorrent, ghalkemm kien ilu illi ghalaq il-provi tieghu mill 14 ta' April 2010, ippresenta nota b'faxxikolu ta' dokumenti, liema dokumentazzjoni gew accettati min dina l-Qorti ghalkemm l-istadju tal-provi rikorrenti kien ilu maghluq.

Rat illi fl-14 ta' April 2016, dina l-Qorti, wara illi osservat illi l-kawza odjerna kienet ilha ghaddejja ghal aktar minn tmien snin, iddikjarat il-provi kollha bhala maghluqa w il-kawza thalliet ghas-sottomissjonijet finali.

Rat illi fit 8 ta' Gunju 2016, ghalkemm il-provi kienu gew dikjarat maghluqa, l-intimat ippresenta affidavit tieghu, liema affidavit, fl-ahjar interess tal-gustizzja, dina l-Qorti accettat fl-atti.

Semghet it-trattazzjjoni tal-abbli difensur tar-rikorrent moghtija fid 9 ta' Gunju 2016.

Rat is-sottomissjonijiet bil-mitkub ta' l-intimat ippresentati fit 23 ta' Gunju 2016.

Rat is-sottomissjonijet bil-miktub responsivi tar-rikorrent ippresentati fl-4 ta' Lulju 2016.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent, fiz-zmien illi inkiteb l-artikolu meritu tal-kawza odjerna, kien il-Kap tal-Kamra tal-Ahbarjiet u Editur tal-PBS Limited, li jiggestixxi l-istazzjoni televiziv u radjofoniku Television Malta, ossija TVM.

Jirrizulta illi fis-sena 2008, wara l-Elezzjoni Generali illi kienet saret fil-bidu tas-sena 2008, il-Partit Laburista kellu Elezzjoni ghal Kap il-gdid tieghu, wara illi l-Kap ta' dak iz-zmien, Dr Alfred Sant, kien irrezenja.

Jirrizulta illi fost il-kandidati li kien tefghu in-nomina taghha ghal Kap tal-Partit Laburista, kien hemm Dr Joseph Muscat u Dr George Abela.

Jirrizulta illi l-elezzjoni ghal Kap Gdid tal-Partit Laburista kellha tinzamm fil-5 ta' Gunju 2008 filwaqt illi t-tellieqa ghal tali elezzjoni kellha tinbeda ufficjalment f'Mejju ta' l-istess sena.

Jirrizulta illi fit-18 ta' April 2008, l-ahbarjiet tat-8 ta' filghaxija tat-TVM xandru storja fejn sahqu illi ser kien hemm "*zvolta gdida fit-tellieqa ghat-tmexxija tal-Partit Laburista*" fejn stqarrew illi

> *'Ic-centru tal-ahbarjiet huwa nfurmat li hemm sforzi biex ihajjru lil Joseph Muscat biex ma jitfax il-kandidatura tieghu ghal mexxej tal-partit u jaghti appogg lil Gorg Abela".*

Jirrizulta illi, anqas minn siegha wara illi gie mxandar tali ahbar, Dr Joseph Muscat hareg is-segwenti stqarrija:

> *"Nirreferi ghall-ahbar li xxandret fuq l-Ahbarjiet ta' PBS illejla.*
>
> *Nichad kategorikament li jiena se nkun qed nirtira l-kandidatura tieghi ghal-Mexxej tal-Partit.*
>
> *Ta' min jghid li l-PBS xandar l-ahbar tieghu fejn ta' l-impressjoni li jien mhux se nkun qed nikkontesta, minkejja li kont bghatt nota bil-miktub fejn ikkonfermajt li jien se nikkontesta.*

…

Il-PBS xandar din l-ahbar ezatt lejliet il-gurnata li matulha se nhabbar il-Vizjoni u Proposti tieghu ghal Partit Laburista."

Jirrizulta illi, sussegwentement, giet skambjata korrispondenza bejn ir-rikorrent u Dr Joseph Muscat dwar tali ahbar.

Jirrizulta, di fatti, illi r-rikorrent, filwaqt illi wera d-disappunt tieghu talli "*ghedt li l-PBS qed tintuza direttament fil-kampanja tal-leadership tal-Partit Laburista*", stqarr is-segwenti:

"Kuntrarju ghal dak li ghedt inti, kemm fl-istqarrija, kif ukoll meta tkellimna fuq it-telefon, inti ma kont kategoriku xejn partikolarment fl-ewwel email. Bqajt tghid li inti interessat fil-kariga ta' mexxej, imma qatt ma ridt tghid jekk int interessat fil-kariga ta' mexxej BISS. Minn persuna li qed taspira ghal posizzjoni bhal din, nahseb li hu gust li l-gurnalisti u l-pubbliku jisimghu kliem ftit aktar car"

Jirrizulta illi Dr Muscat irrisponda ghal tali asserzjoni billi qal is-segwenti:

"Fil-kumment tieghi lilkhom ridt noqghod attent biss li ma tintuzax xi kelma kontra George Abela jew xi kontestant iehor. Ghalhekk bghattha bil-mitkub., Dik hija punt fundamentali tal-kampanja tieghu ghax ma nemminx li attakki jaghmlu gid lil hadd. Jekk kont "kawt" izzejjed – veru. L-uzu tal-kelma "biss" kienet tkun f'lokha – daret kontriha spiccat l-affari!"

Jirrizulta illi f'korrispondenza sussegwenti, Dr Muscat zied jghid:

"Xorta nahseb li anke mibghajd dik il-kelma, l-istorja giet immuntata barra mill-proporzjon"

Jirrizulta illi waqt illi kienet ghaddejja dina l-korrispondenza, l-intimat, fil-gurnal tieghu Malta Today, kiteb opinjoni intitolata '**Gonzi's new way of doing politics at MEPA**' fejn tkellem ukoll dwar ir-rappurtagg tal-PBS illi dwaru kien ilmenta Dr Joseph Muscat, u fiha qal is-segwenti kliem li sussegwentement ir-rikorrent, fil-proceduri odjerni, indika bhala malafamanti fil-konfront tieghu:

It came to me as a surprise when PBS announced that Joseph Muscat would not be contesting the Labour leadership battle. It was of course a big fat lie, and despite the fact that Muscat sent in a statement to Mr Natalino Fenech that it was not true, Mr Fenech went ahead and did what he had to do. We have to stop here for a minute. As everyone knows, Mr Fenech is not only someone who does not like Labour but he is also someone who specialises in spin.

….

The spin concocted by Natalino Fenech favour, as we all know, George Abela. And Dom Fenech, as well all know, is blatantly campaigning for Dr Abela.

Jirrizulta illi dwar dan il-kumment, kif ukoll kummenti ohra illi ser jigu kkunsidrati aktar 'l quddiem, ir-rikorrent nieda l-proceduri odjerni fit 30 ta' April 2008.

Ikkunsidrat

Jirrizulta illi apparti l-kummenti fuq gia indikati li dwarhom hass ruhu malafamat ir-rikorrent, kien hemm ukoll zewgt kummenti ohra li dwarhom hass ruhu malafamat, u dana jirrigwardaw l-involviment tar-rikorrent fil-qasam tal-orthinologija fejn l-intimat ghamel referenza ghal-ktieb tar-rikorrent, minghajr ma semma tali ktieb, u dwaru qal is-segwenti:

> *You see, Natalino, as many people may now know, was a vehement opponent of hunting. He was also an author of a funny book about hunting that was full of inaccuracies and massive exagerations.*

Jirrizulta wkoll illi l-intimat, li kien involut da parte tal-Gvern tal-gurnata fid-diskussjonijiet mal-Unjoni Ewropeja dwar id-dhul ta' Malta fl-istess Unjoni u l-aspett tal-Kacca f'Malta, kompla jghid dwar ir-rikorrent, li ma kienx involut f'tali negozjati, is-segwenti:

> *When he was sort of not involved in the run-up to the negotiations on hunting, typically, he started to befriend hunters. On one occasion he got a Times journalist to ask me if I had ever eaten game when off in France. To which I informed the poor Roseanne Zammit to tell Natalino to sod off.*

Jirrizulta illi fis-sena 1992, ir-rikorrent kien kiteb ktieb intitolat '**Fatal Flight – the Maltese Obsession with Killing Birds**', liema ktieb kien ezamina bir-reqqa il-kacca gewwa Malta u kien, fost affarjiet ohra, sahaq illi numru kbar ta' ghasafar jinqatlu gewwa Malta w Ghawdex, u kien ppresenta statistika dwar n-numru ta' ghasafar illi jinqatlu kull sena.

Jirrizulta illi tali ktieb, kif inhu mistenni ladarba jirrigwarda s-suggett dejjem kontrovesjali tal-kacca u insib, kien attira kemm tifhir da' parte ta' ghaqiet konservazzjonisti, kemm lokali kif ukoll internazzjonali, kif ukoll kritka qawwija in rigward in-numri kkwotati mill-istess awtur, u dana partikolarment mill-qasam lokali.

Jirrizulta illi tant kien qajjem kontroversja dana il-ktieb illi l-Ghaqda Kaccaturi u Nassaba Konservazzjonisti (FKNK) ippubblikaw ktieb intitolat '**Fatal Flight – the Maltese Obsession with Killing Birds – THE FACTS**', fejn giet kontradetta l-istatistika msemmija mir-rikorrent.

Jirrizulta illi, kif stqarrew l-FKNK fil-ktieb taghhom "*his connivance Fatal Flight has been passed on to travel agents abroad in a base attempt at blackmail by hitting at the tourist industry – the mainstay of our Island's economy.*"

Jirrizulta illi, fil-kawza odjerna, ttella jixhed Joe Sultana, illi huwa persuna ben ricerkata u rispettata fi-qasam tal-Ornithologija f'Malta, u li kien anke kiteb artikolu zghir fl-istess ktieb fuq imsemmi fejn fahhar l-inizzjattiva tar-rikorrent ibbazata, kif kien stqarr, "*through sound facts and figures*" u jghid dwar il-ktieb li r-rikorrent "*gives us insight into an intricate socio-political problem which, sadly, this country has not yet been able to resolve.*"

Jirrizulta, fix-xhieda ta' l-istess Joe Sultana, illi ghalkemm originalment huwa kien kkontenda illi l-istatistika pprovduta mir-rikorrent kienet wahda tajba, sussegwentement, seta jikkonstata illi tali figuri kienu kemmxejn esagerati u mhux korretti, u dana peress illi l-metodu adottat ir-rikorrent biex jasal ghall-figuri minnu indikat fil-ktieb ma kienx wiehed korrett, liema metodu seta jwassal ghal numru akbar minn dak attwalment maqbuda mill-kaccaturi.

Jirrizulta illi tali assersjoni kienet il-bazi li wasslet lill-intimat, li ghal xi zmien kien membru flimkien mar-rikorrent fl-ghaqda ‘Zghazagh ghall-Ambjent’, sabiex jaghmel il-kummenti tieghu li dwarhom ir-rikorrent qieghed jilmenta.

Jirrizulta wkoll illi dwar l-ahhar frazi li dwarha hassu malafamat ir-rikorrent, ossija illi baghat gurnalista jistaqsi lill-intimat dwar il-gosti kulinarji tieghu, l-istess rikorrent jikkonferma illi huwa minnu li kien baghat lill-gurnalista tistaqsieh tali domandi, u dana kien rizultat ta’ Stqarrija illi kienet harget l-FKNK fit 13 ta’ Dicembru 2006 fejn allegat, fost affarjiet ohra, illi l-intimat “*is known to have accompanied French hunters on woodcock shooting outings and later lavishly feasted on the shot birds*”.

Ikkunsidrat

Jirrizulta, l-ewwel u qabel kollox, illi l-ilment tar-rikorrent huwa bbazat fuq zewgt kwistjonijiet principali – dik l-allegazzjoni ta’ l-intimat illi r-rikorrent kien “*someone who specialises in spin*”, kif ukoll l-allegazzjoni illi l-ktieb tieghu kien “*full of inaccuracies and massive exaggerations*.”

Jirrizulta wkoll illi d-difiza principali ta' l-intimat kienet li l-kummenti illi saru kienu ‘*fair comment*’ u kellu kull dritt li jikkummenta dwar il-materja in kwistjoni.

Ikkunsidrat

Huwa utili, f’dana l-istadju, illi wiehed ezamina fil-qasir l-principji tad-difiza tal-‘*fair comment*’ bil-ghan illi wiehed ikun jista jikkunsidra l-fatti kif fuq stabbiliti fl-ottika tal-principji generali tad-difiza tal-‘*fair comment*’.

Madanakollu, qabel ma tghaddi biex taghmel tali ezami, huwa utili illi jigi ezaminat wkoll jekk r-rikorrent setghat jiqies bhala persuna pubblika jew persuna privata fl-ambitu tal-artikolu mitkub, stante illi dana ghandu effett fuq il-livell ta’ kumment w kritika li l-istess rikorrent seta jigi suggett ghaliha.

Jirrizulta mhux kkontestat illi fil-mument illi nkiteb l-artikolu meritu tal-kawza odjerna, ir-rikorrent kien Kap tal-Kamra tal-Ahbarjiet ta' l-Istazzjoni tax-xandir pubbliki tal-Istat.

Kif qalet il-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kaz **Voronezhe**:

> *..... civil servants acting in an official capacity are, similarly to politicians albeit not to the same extent, subject to wider limits of acceptable criticism than a private individual (see, mutatis mutandis, Janowski v. Poland [GC], no. 25716/94, § 33, ECHR 1999-I).*

Ghalkekk ma ghandu jkun hemm ebda dubju illi r-rikorrent kellu livell ta' kritika ferm oghla minn dik ta' cittadin komuni, anke in vista tal-kariga importanti illi kellu r-rikorrenti, liema kariga fissret illi l-livell ta' kritika ta' l-azzjonijiet tar-rikorrent setghet tkun oghla minn dik ta’ individwu privat, izda certament ma tistax tkun gholja daqs dik ta’ persuna politika illi huwa suggett ghall-livell ta’ kritika ferm oghla.

Dwar id-difiza ta’ ‘*fair comment*’ **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.

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, tali principji gew minnha mhaddna u spjegati kif gej :

... dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħlu 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; (ċ) 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'ħażen jew bil-ħsieb preċiż li jweġġa' lil dak li jkun.

Tali taghlim huwa anke riflessa fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwenti konsiderazzjonijiet meta wiehed iqis id-difiza ta' 'fair comment':

... 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.

Finalment, dwar il-kuncett ta' '*value judgment*', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567,para 43, tghid is-segwenti:

... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it ."

Jirrizulta car, ghalhekk, mill-gurisprudenza fuq imressqa, illi hemm sabiex id-difiza ta' '*fair comment*' u '*value judgment*' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

Ikkunsidrat

Jirrizulta, mix-xhieda ppresentata quddiem dina l-Qorti, illi r-rikorrent kien qieghed jilmenta li l-intimat allega li r-rikorrent kien qieghed johloq "*spin*" meta huwa, bhala editur tan-News Room tat-TVM, mexxa storja li fiha gie allegat illi Dr Joseph Muscat kien ser jirtira l-kandidatura tieghu ghal Mexxej tal-Partit Laburista.

Jirrizulta, madanakollu, illi huwa l-istess Dr Joseph Muscat, kemm f'kommunikazzjoni illi huwa stess kellu mar-rikorrent wara illi giet pubblikata l-ahbar fl-ahbarjiet principali tat-TVM tat 8 ta' filgahxija, kif quddiem dina l-Qorti stess, illi kkonferma illi dik l-istorja kif riprodotta kienet falza u inkorretta u bbazata biss fuq il-fatt illi, fuq domandi tar-rikorrent lill Joseph Muscat, huwa ma qalx lill-istess rikorrent illi kien interessat 'BISS' fil-kariga ta' mexxej.

Jirrizulta car illi l-istorja mtella mill-Kamra tal-Ahbarjiet tat-TVM, illi huwa l-uniku stazzjoni nazzjonali u governattiv ta' Malta, fejn saret l-allegazzjoni li Dr Joseph Muscat kien ser jirtira l-kandidatura tieghu, kienet wahda falza u bbazata fuq konstatazzjonijiet skorretti jew mhux fittizji, liema konstatazzjonijiet kienu gew michuda mill-istess Dr Muscat qabel ma' l-ahbar gie mxandar, izda madanakollu l-istorja xorta harget u giet mghoddija lill mijiet jekk mhux eluf ta' cittadini Maltin u Ghawdxin illi regolarment isegwu l-ahbarjiet ta' istazzjoni Nazzjonali Malti.

Il-Qorti tosserva illi, rrispettivament jekk wiehed ghandhux juza l-kliem 'spin' jew kliem ohra fil-konfront ta' min mexxa tali ahbar, huwa car illi, fil kaz odjern, l-istazzjoni nazzjonali intuza sabiex jitwassal messagg lill-poplu illi ma kienx minnu, u tali fatt, minnu nnissfu, huwa sufficjenti biex issir kritika, anke jekk hemm bzonn, harxa, dwar tali fatt, stante illi l-ahbarjiet ghandhom dejjem ikunu veritjieri u korretti u bbazati fuq fatti sostanzjalment korretti u, meta dana ma hwiex minnu, kritika dwarhom ghandha tigi accettata.

Ikkunsidrat

Jirrizulta wkoll illi r-rikorrent qieghed jilmenta dwar il fatt illi l-intimat irrefera ghall-ktieb tar-rikorrent bhala wiehed "*funny*" u kif "*full of inaccuracies and massive exagerations*".

Il-Qorti tosserva illi, l-ewwel u qabel kollox, l-intimat imkien ma indika ghal liema ktieb qieghed jirreferi u ghalhekk, ghall qarrej ordinarju, tali referenzi certament jghaddu inosservati.

Il-Qorti, madanakollu, tosserva wkoll illi, l-ewwel u qabel kollox, qatt ma jista jkun hemm qatt hjiel ta' malfama meta tintuza l-kelma "*funny*" stante illi dina tirrifletti opinjoni personali ta' persuna, liema opinjoni huwa ghandu kull dritt illi jkollu u jesprimi fil-pubbliku minghajr il-biza illi ser jinbdew proceduri kontra tieghu.

Dwar l-allegazzjonijiet illi l-ktieb tar-rikorrenti kien "*full of inaccuracies and massive exagerations*", il-Qorti ma tistax ma tosservax illi kienu varji l-entitajiet lokali illi qajjmu tali thassib, fosthom l-FKNK, illi sahasnsitra ppubblikaw ktieb biex jirribatu l-allegazzjonjiet tar-rikorrent f'tali ktieb, u awtoritajiet lokali ohra, bhalma huma Joe Sultana, persuna rispettata u maghrufa fil-qasam tal-Ornithologija, li stqarr illi ghalkemm il-ktieb tar-rikorrent kien wiehed tajjeb ghax qajjem kuxxjenza dwar il-Kacca f'Malta, il-figuri msemmija mill-istess rikorrent kienu esagerati stante illi bbazati fuq metodu ta' kalkolu approsimmattiv u mhux xjentifiku.

Ikkunsidrat

Il-Qorti, tenut kont tal-fatti kollha kif fuq spjegati, ma tara ebda element ta' malafama jew libel fl-artikolu illi minnu jilmenta r-rikorrent, stante illi huwa ezercizzju ta' 'fair comment' minn gurnalist illi ghandu obbligu illi jzommu lill-pubbliku infurmat b'dak kollu illi qieghed jigri u li jista jkun ta' interess pubbliku, u dana fil-parametri tal-posizzjoni ta' l-istess gurnalist bhala 'public watchdog' tal-poltici u persuni pubblici biex jigi assikurat illi l-operat ta' dawn il-persuni jkun fl-ahjar interess tal-pajjiz u tal-pubbliku in generali.

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha,

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 kif dedotti.

Spejjez tal-proceduri odjerni jkunu a karigu tar-rikorrent.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur