



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis sebgha (7) ta' Dicembru 2017

Rikors Numru 99/14 FDP

**Dr Simon Busuttil
(ID 242669M)**

vs

Dr Toni Abela (ID 482157M) bhala editur tal-gurnal 'KullHadd' u, permezz ta' nota datata 6 ta' Dicembru 2016 assumma l-atti Aleander Balzan (ID 586485M)

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil-21 ta' Marzu 2014 fejn ir-rikorrent talab lill-Qorti tikkundanna lir-rikorrent, bhala editur tal-gurnal Kullhadd

Previa li din il-Qorti tiddeciedi u tiddikjara li l-artikolu ppubblikat fuq il-gurnal "KullHadd" fl ewwel (1) u t-tieni (2) pagna tal-harga tal-Hadd, sittax (16) ta' Marzu elfejn u erbatax (2014) intitolat fl-ewwel pagna 'Direct orders ghal Simon' li jkompli fuq it-tieni (2) pagna bit-titolu 'Rigal tal-Istrina ghall kumpanija ta' Busuttil' kien jikkontjeni allegazzjonijiet u insinwazzjonijiet foloz u malafamanti fil-konfront tal-attur u li ghandhom bhala skop li joffendu l-unur u fama tieghu u li jesponuh ghar-redikolu u disprezz tal-pubbliku u/jew inaqqsu r- reputazzjoni tieghu, senjatament fejn gie allegat li nhargu direct orders ghall attur, li nghata rigal tal-Istrina ghall-kumpanija tal-attur, kif ukoll fl-assjem tieghu fejn gie allegat li nghataw direct orders lil kumpanija privata ghaliex l-attur kien parti minnha, li d-direct orders ma nghatawx a bazi tal-kompetenza tal-kumpanija;

Tikkundanna lill-intimat sabiex ihallas lill-attur dik is-somma li tiffissa l-istess Onorabbli Qorti, liema somma ma teccedix l-ammont ta' hdax-il elf, sitt mija u sitta u erbgħin ewro (€11,646) bhala danni b'applikazzjoni tal-Att dwar l-Istampa, Kap 248 tal-Ligijiet ta' Malta.

Rat l-artikolu meritu tal-kawza odjerna fejn, fil-faccata, flimkien ma' ritratt ta' Ittra datata 5 ta' Frar 2009 mahruga mid-Direct Orders Section tal-Ministeru tal-Finanzi, l-Rkonomija u Investment intitolata "Provision of technical assistance to the Managing Authority" u ritratt tar-rikorrent, hemm l-artikolu b'titolu ta' "**Direct Orders ghal Simon Busuttil**" illi jibda fil-faccata u jkompli fit-tieni faccata taht it-titolu '**Rigal tal-Istrina ghall-Kumpanija ta' Busuttil**', u jghid dan li gej:

Dokumenti pubblici jikkonfermaw li l-Kap tal Partit Nazzjonalista Simon Busuttil ha kuntratti b'direct order mal-Gvern, fost il-kwazi nofs miljun ewro li dahhlet il-kumpanija tal-avukati, li taghha Busuttil kien bi shab. Dawn in-nofs miljun ewro huma biss minn ministeru wiehed. Waqt il programm Xarabank, Simon Busuttil qal li l-kuntratti ta' konsulenti li hadet il-kumpanija tal-avukati tieghu taht Gvern Nazzjonalista kienu kollha b'tender.

Il gazzetta KullHadd tista' tizvela li l-kumpanija ta' avukati ta' Simon Busuttil, Europa Consultancy and Research, hadet eluf kbar ta' ewro f'direct order mill-Ministeru ta' George Pullicino. Id-direct order kienet iffirmata mis-Segretarju Permanenti tal-Ministeru tar-Rizorsi u l-Infrastruttura.

Id-dokument li qed nippublikaw fl-ewwel pagna juri, per ezempju, kif il-kumpanija Europa, li fiha huwa shab Simon Busuttil, hadet Kuntratt b'direct order ta' €52,000 f'Jannar 2009, li kien imqassam f'numru ta' pagamenti.

Wiehed jista' jsemmi wkoll tliet kuntratti partikolari li nghataw fl ahhar jumejn tas-sena 2012, fejn il Kumpanija Europa nghatat kuntratti li €34,000. Wiehed ghandu jfakkar kif fl-istess zmien li nghataw dawn il-Kuntratti, Simon Busuttil kien diga lahaq Vici-Kap tal-Partit Nazzjonalista, u aghar minn hekk il-Gvern Nazzjonalista kien sfiduciat fil-Parlament u ghalhekk ma kellux aktar il-fiducja biex imexxi lill-pajjizna.

Il-Gvern Nazzjonalista sahsitra ta' konsulenza lill-kumpanija ta' Busuttil ghall-ftuh ta' wine bar.

Tajjeb li wiehed jiftakar kif f'Xarabank, nhar Gimgha li ghadda, apparti li Simon Busuttil qal li dawn il-kuntratti dejjem hadhom b'tender, li issa zvelajna li mhux il-kaz, il-Kap tal-Oppozizzjoni tkellem ukoll dwar kif dawn kuntratti nghataw lil minhabba l-kompetenzi tieghu.

Wiehed ghalhekk jistaqsi x'inhuma l-kompetenzi tal-Kap tal Oppozizzjoni f'dak li ghandu x'jaqsam ma' ftuh ta' Winebar u lil hinn minn hekk anke petenzi tieghu fit-trobbija tal-majjali, hekk kif kien hemm kuntratti li nghataw lil fuq dawn is-suggetti partikolari.

Rat l-affidavit ta' **Dr Simon Busuttil**, ippresentat fit-30 ta' Mejju 2014 u d-dokumentazzjoni minni esebita.

Rat l-affidavit ta' **Dr Peter Fenech**, ippresentat fit-30 ta' Mejju 2014.

Semghet ix-xhieda ta' **Christopher Ciantar**, moghtija fl-atti tal-kawza 179/2014 fis-6 ta' Novembru 2014, li l-partijiet qabblu kellha tapplika wkoll ghall-kawza odjerna.

Rat l-affidavit ta' **Stefano Mallia** ippresentat fid-19 ta' Jannar 2015.

Rat illi fid-19 ta' Jannar 2015 ir-rikorrenti ddikjara illi ma kellhux aktar provi x'jipresenta.

Semghet ix-xhieda ta' **Dr Toni Abela** moghtija fis-16 ta' April 2015.

Semghet il-kontro ezami tar-rikorrent illi saret fl-4 ta' Gunju 2015.

Semghet ix-xhieda ta' **Dr Claudette Fenech**, bhala rapprezentant tal-MFSA, moghtija fil-5 ta' Ottubru 2015 u rat id-dokumentazzjoni minnha esebita.

Semghet ix-xhieda ulterjuri ta' Dr Toni Abela moghtija fil-5 ta' Ottubru 2015.

Semghet ix-xhieda ta' **Dr Christopher Mizzi**, rapprezentant tad-Dipartiment tal-Kuntratti, moghtija fid 9 ta' Novembru 2015.

Semghet ix-xhieda ta' **Dr Franco Agius**, Senior Manager fi hdan id-Dipartiment tal-Kuntratti, moghtija fit-18 ta' Jannar 2016 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Dr Claudette Fenech**, bhala rapprezentant tal-MFSA, moghtija fis-27 ta' Gunju 2016 u rat id-dokumentazzjoni minnha esebita.

Rat illi fis-6 ta' Dicembru 2016 l-intimat Aleander Balzan assuma l-atti tal-kawza flok Dr Toni Abela.

Semghet ix-xhieda ta' **Dr Austin Sammut** moghtija fit-12 ta' Dicembru 2016.

Rat illi fit-28 ta' Settembru 2017 l-intimat iddikjara illi ma kellhux aktar provi x'jipresenta

Semghet is-sottomissjonijiet orali tal-abbli difensuri taz-zewgt partijiet moghtija fid-9 ta' Novembru 2017, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrenti, Dr Simon Busuttil, illi huwa Avukat bi professjoni, kien inghaqad u sar parti mid-ditta ta' avukati bl-isem ta' Ganado & Sammut Advocates fis-sena 1994, li eventwalment biddlet isimha f'Ganado Sammut Advocates, f'liema ditta, apparti r-rikorrent, kien hemm ukoll Dr Peter Fenech u Dr Austin Sammut.

Jirrizulta illi fis-sena 2004, ir-rikorrent kien elett bhala Membri tal-Parlament Ewropew, liema kariga huwa zamm sa' nofs is-sena 2012, meta gie mahtur bhala Vici Kap tal-Partit Nazzjonalista.

Jirrizulta illi sussegwentement, wara l-Elezzjoni Generali ta' Marzu 2013, huwa gie mahtur Kap tal-Partit Nazzjonalista, liema kariga huwa zamm sa Novembru 2017.

Jirrizulta illi d-ditta Ganado Sammut kellha socjeta illi giet inkorporata fis-sena 2003 intiza sabiex tippovdi konsulenti dwar l-Unjoni Ewropeja bl-isem ta' Europa Research and Consultancy Services Limited, f'liema ditta, eventwalment fis-sena 2006, issiehbet bhala azzjonist is-socjeta EMCS Investments Limited, liema socjeta EMCS akkwistat 50% tal-kumpannija filwaqt illi s-socjeta Gansam Holdings Limited, li kellha bhala azzjonisti lit-tlett avukati tad-ditta Ganado Sammut Advocates, inkluz ir-rikorrent, kellha ir-rimanenti 50%.

Jirrizulta illi fil-bidu tas-sena 2011, id-ditta legali Ganado Sammut ma' baqghetx topera filwaqt illi l-operat tas-socjeta Europa Research and Consultancy Services Limited, li baqghet bl-istess azzjonisti, thalliet f'idejn l-azzjonista EMCS Investments Limited, u dana b'effett mill 1 ta' Lulju 2012.

Jirrizulta illi l-kumpanija Europa Research and Consultancy Services Limited ghadha esistenti sa' llum, bl-istess azzjonisti illi kellha, inkluz dik tar-rikorrent Dr Simon Busuttil, illi ghandhu terz tal-ishma tas-socjeta Gansam Holdings Limited illi hija mbghad ghandna nofs l-ishma tas-socjeta Europea Research & Consultancy Services Limited.

Ikkunsidrat

Jirrizulta illi fis-16 ta' Marzu 2014, il-gurnal ta' nhar ta' Hadd **Kullhadd**, b'referenza ghal dak illi kien qal ir-rikorrent waqt il-programm Xarabank jumejn qabel, fejn l-istess gurnal irrappurtat li kien sahaq li *"kuntratti dejjem hadhom b'tender"*, ippubblikat storja dwar ir-rikorrent fejn allegat illi r-rikorrenti kien inghata Direct Orders, a differenza, allura, ta' dak illi kien sahaq fil-programm televiziv fuq imsemmi.

Jirrizulta illi, fil-faccata ta' quddiem tal-gazzetta, giet ippubblikata ittra mahruga mid-Direct Orders Section tal-Ministeru tal-Finanzi, l-Ekonomija u Investment intitolata *"Provision of technical assistance to the Managing Authority"* illi kienet tghid, fost affarjiet ohra:

"This Ministry, in terms and for the purpose of 2005 Public Contracts Regulations as amended, is granting approval to the Ministry for Resources and Rural Affairs to engage EUROPA Research and Consultancy Services to provide management and technical support to the Managing Authority within the Ministry for Resources and Rural Affairs for the cost of €52,000, excluding VAT, covering a period of 6 months, starting from 2nd February 2009."

Jirrizulta illi l-artikolist ta' dana il-gurnal, filwaqt illi ghmel referenza ghall-ittra ppubblikata, sahaq illi tali hlasijiet kien *"fost il-kwazi nofs miljun ewro li dahhlet il-kumpanija tal-avukati"*.

Jirrizulta wkoll illi, apparti dawna l-allegazzjonijiet, l-artikolist jaghmel ukoll zewgt allegazzjonijiet ohra, ossija illi l-kumpanija Europa inghatat tlett kuntratti fil-valur komplessiv ta' €34,000 lejn l-ahhar tas-sena 2012, liema kuntratti huwa sejjah *"Rigal tal-Istrina ghall-kumpanija ta' Busuttil"* kif ukoll illi is-socjeta tar-rikorrenti inghatat konsulenza ghall-ftuh ta' wine bar.

Jirrizulta illi r-rikorrent hassu malafamat b'dawn l-allegazzjonijiet u titoli adoperati mill-gurnal u ghalhekk nieda l-proceduri odjerni.

Ikkunsidrat

Jirrizulta, mill-eccezzjonijiet mqajjma mill-intimat bhala editur tal-gurnal, li d-difiza mqajjma mill-intimat kienet principalment dik ta' *"fair comment"* dwar persuna involuta fil-politika, bhalma huwa r-rikorrent, li huwa Kap tal-Opposizzjoni, liema kritika setghet tkun oghla, u anke iebsa kif ukoll dwar id-dover illi huwa kellu, bhala gurnalist, illi jwassal ahbar lill-qarrejja sabiex jigi interpretat minnhom.

Ghalhekk ikun opportun illi jigu kkunsidrati certi principji illi fuqhom dawna l-Qrati jibbazaw il-hsibijiet taghhom.

L-intimat jistqarr illi bhala editur ezercita d-diligenza rikjesta mill-ligi filwaqt illi sahaq li l-artikolista kellu d-dritt tikkummenta dwar l-operat tar-rikorrent.

Dwar tali id-dritt, fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, saret 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-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.

Dwar ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli biex tghid is-segwenti:

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".

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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.

Tali rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-espressjoni, madanakollu, ghandu jigi bilancjat bi drittijiet u obbligi illi l-istess gurnalist, fil-qadi ta' dmirijietu, ghandu josserva u, di fatti, il-Qorti Ewropea, 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.

Biex jigi accertat 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-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.

(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.

Ghandu jigi osservat ukoll illi, kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll, il-politiku huwa soggett għall-livell ta' kritika ferm oghla minn-normal, u di fatti, s-sentenza tghid:-

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.

Kif gie osservat fil-kawza **Delphi AS vs Estonia** deciza mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fl-10 ta' Ottubru 2013, id-dritt tal-liberta' ta' l-espressjoni, li giet invokata mill-intimat, giet ikkunsidrata kif gej:

78. The fundamental principles concerning the question whether an interference with freedom of expression is “necessary in a democratic society” are well established in the Court’s case-law and have been summarised as follows:

(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

.....

79. Furthermore, the Court reiterates the essential function the press fulfils in a democratic society. Although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments.

80. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life.

81. When examining whether there is a need for an interference with freedom of expression in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities have struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely on the one hand freedom of expression protected by Article 10, and on the other the right to respect for private life enshrined in Article 8.

82. The Court has found that, as a matter of principle, the rights guaranteed under Articles 8 and 10 deserve equal respect, and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher of an offending article or under Article 8 of the Convention by the person who has been the subject of that article. Accordingly, the margin of appreciation should in principle be the same in both cases.

83. The Court has considered that where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria in the balancing exercise include the following elements: contribution to a debate of general interest, how well known the person concerned is, the subject of the report, the prior conduct of the person concerned, the method of obtaining the information and its veracity, the content, form and consequences of the publication, and the severity of the sanction imposed.

Tali principju kif fuq enuncjat reggha gie ripetut fil-kawza **Erla Hlynsdottir vs Iceland** deciza mill Qorti Ewropeja ghad-Drittijiet tal-Bniedem ricentement, ossija fil 21 ta' Ottubru 2014, fejn intqal is-segwenti:

62. The protection of the right of journalists to impart information on issues of general interest requires that they should act in good faith and on an accurate factual basis and provide “reliable and precise” information in accordance with the ethics of journalism . Under the terms of paragraph 2 of Article 10 of the Convention, freedom of expression carries with it “duties and responsibilities” that also apply to the media, even with respect to matters of serious public concern. Those “duties and responsibilities” are significant 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.

Fl-istess decizjoni, il-Qorti ghamlet is-segwenti osservazzjonijiet dwar id-difiza ta' 'fair comment' imqajjma mill-intimat, maghrufa bhala 'value judgment' quddiem il-ECHR:

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-segwenti:

"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', imbgħad, **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, intqal is-segwententi :

... dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehntieg li min jistrieħ fuqha jsehħlu 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 misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir 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 preciz li jwegga' lil dak li jkun.

Tali taghlim 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 ghamel is-segwententi konsiderazzjonijiet meta wiehed 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.

Ikkunsidrat

Jirrizulta, mill-artikolu meritu tal-kawza odjerna, illi qieghed jigi allegat principalment tlett affarjiet:

- li r-rikorrent personalment inghata 'Direct Order', u dana kif jidher fit-titolu tal-artikolu "Direct Orders ghal Simon Busuttil";
- li l-kumpannija tal-Avukati li fih ir-rikorrent kien sieheb inghatat b'nofs miljun Euro f'konsulenti mill-Ministeru ghar-Rizorswi u Affarjiet Rurali;
- li fl-ahhar tas-sena 2012 il-kumpannija Europa inghatat tlett kuntratti b'valur ta' madwar €34,000, liea kuntratti gew definiti fit-titolu bhala "Rigal tal-Istrina ghall-kumpannija ta' Busuttil";
- li l-kumpannija Europa inghatat konsulenza ghal ftuh ta' wine bar.

Jirrizulta, illi mill-provi kollha prodotti mill-intimat, skond id-Dipartiment tal-Kuntratti, li jikkunsidra l-kuntatti mghotija b'tenders mill-Gvern, bejn is-sena 2000 u Ottubru 2015, is-socjeta Europa Research & Consultancy Services Limited inghatat tender wiehed fit 28 ta' Settembru 2010, u dana flimkien ma' tlett kumpanniji ohra, ta' "Engineering Procurement Construction Managment Consultancy Services for Design, REIA, Contracting & Managing a Projecy for the Construction of a Mechanical and Biological Treatment Plant in the North of Malta", liema tender kellu l-valur ta' €1,984,173.40.

Jirrizulta, madanakollu, illi ma ngiebet ebda prova, ghajr ghall-Ittra illi tidher ippubblikata fil-harga tal-gazzetta u meritu tal-kawza odjerna, li xi socjeta tar-rikorrent jew l-kumpanija ta' Avukati tar-rikorrenti inghatat Direct Order kif jidher allegat varji drabi mill-artikolisti fl-artikolu meritu tal-kawza odjerna.

Il-Qorti tosserva illi mill-provi prodotti, jirrizulta illi r-rikorrent ghandu sehem ta' 16.7% tas-socjeta Europa Research & Consultancy Services Limited, u jirrizulta illi id-Direct Order ppubblikata fl-artikolu li kienet datata 5 ta' Frar 2009 ma inghatatx lir-rikorrent, kif l-artikolist jallega bi kliem b'tipi kbar fil-faccata tal-gazzetta, izda inghatat lis-socjeta Europa Research & Consultancy Services Limited fuq imsemmija.

Il-Qorti tosserva wkoll illi ma ngabux provi illi s-socjeta Research & Consultancy Services Limited inghatat tlett kuntratti li gew deskritti bhala "Rigal tal-Istrina" fl-ammont ta' €34,000 lejn l-ahhar tas-sena 2012.

Ghalhekk, il-Qorti ma tistax ma tasalx ghall-konkluzjoni illi mill-provi kollha prodotti quddiem dina l-Qorti, filwaqt illi gie stabbilit illi r-rikorrent huwa azzjonist tas-socjeta Europa Research & Consultancy Services Limited, ma ngiebu ebda provi li juru illi r-rikorrent personalment inghata xi direct order, kif kien qiegħed jigi allegat u wisq anqas ma ngiebet xi prova li turi illi s-socjeta illi fiha kien azzjonist ir-rikorrent inghatat kuntratti li l-artikolist ddeskriva bhala "Rigal tal-Istrina.

Kif gie osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016.

Id-dritt tal-liberta tal-espressjoni m'huwiex licenzja biex thammeg ir-reputazzjoni ta' haddiehor u mbagħad tipprowa tistahba wara dan id- dritt.

Kif gie ukoll osservat mill-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Engineer Anthony Bezzina vs Josef Caruana**' deciza fl-10 ta' Marzu 2017,

Filwaqt li gurnalist ghandu kull jedd u anzi dmir li jirrapporta grajjiet ta' interess pubbliku, pero' ghandu jaqdi dmirijietu in bona fede u m'ghandux jedd jakkuza persuna b'fatti li ma jkunux veri. Id-dritt tal-liberta ta' espressjoni mhuwiex dak li tivvinta .

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha,

Wara illi seghet it-trattazzjoni orali ta' l-abbli difensuri tal-partijiet,

Wara illi ghamlet il-konsiderazzjonijiet kollha tagħha kif fuq spjegat,

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tichad l-eccezzjonijiet kollha ta' l-intimati,

Tilqa t-talba tar-rikorrent kif dedotti u

Tiddikjara il-kontenut ta' l-artikolu ppubblikat fuq il-gurnal "KullHadd" fl ewwel (1) u t-tieni (2) pagna tal-harga tal-Hadd, sittax (16) ta' Marzu elfejn u erbatax (2014) intitolat fl-ewwel pagna 'Direct orders ghal Simon' li jkompli fuq it-tieni (2) pagna bit-titolu 'Rigal tal-Istrina ghall kumpanija ta' Busuttil' li tieghu l-intimat kien l-editur u ghalhekk responsabbli, bhala libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

Tikkundanna, a tenur ta' l-artikolu 28 tal-Kap 248, lill-intimat ihallas lir-rikorrent is-somma komplessiva ta' elf Euro (€1,000) in linea ta' danni sofferti minnu rizultat tal-pubblikazzjoni ta' l-istorja fuq imsemmija.

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku ta' l-intimat

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur