



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis tlieta (3) ta' Mejju 2018

Rikors Numru 23/13 FDP

Dr Austin Gatt

vs

**Saviour Balzan
(ID 127263M)**

Il-Qorti:-

Il-Qorti, rat ir-rikors ippresentat fit-28 ta' Jannar 2013 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu illi deher fir-raba u hames pagna tal-harga tal-Maltatoday tas 27 ta' Jannar 2013 intitolat '*Corruption at Enemalta and the oil scandal*', talab lill-Qorti tiddikjara illi tali pubblikazzjoni kienet libelluza u malafamanti fil-konfront tieghu u ghalhekk il-Qorti kellha tikkundanna lill-intimat ihallas lir-rikorrent danni a tenur tal-Artikolu 28 tal-Kap 248.

Il-Qorti rat il-harga tal-MaltaToday tas-27 ta' Jannar 2013 esebita mir-rikorrent.

Rat l-eccezzjonijiet ta' l-intimat ippresentati fl-14 ta' Marzu 2013 fejn huwa qal is-segweni:

- 1. Illi fl-ewwel lok, ir-rikorrenti ghandu jghid liema huma l-brani mill-artikolu in kwistjoni li skond hu huma malafamanti fil-konfront tieghu;*
- 2. Illi fit-tieni lok, l-artikolu de quo mhux libelluz fil-konfront tar-rikorrenti stante li jikkontjeni fatti sostanzjalment veri u kummenti dwar avvenimenti li sehew f'periodu meta r-rikorrent kien politikament responsabbli mill-Korporazzjoni Enemalta u li l-gazzetta li taghha l-esponent huwa editur zvelat lill-pubbliku. Illi in oltre dak li zvela l-gurnal in kwistjoni gie korroborat minn diversi ufficjali tal-pulizija li taw ix-xhieda tagghom fil-kawzi kriminali li hemm pendenti kontra diversi persuni implikati f'wiehed mill-ikbar skandli ta' korruzzjoni li sehew f'pajjizna;*

3. *Illi fit-tielet lok, ir-rikorrenti stess ammetta pubblikament li kien iltaqa' diversi drabi mal-persuna msemmija fl-istess artikolu u cioe George Farrugia;*
4. *Illi fir-raba lok u minghajr pregudizzju ghas-suespost, fl-artikolu in kwistjoni l-esponent kien qiegħed jezercita d-dritt gurnalistiku tieghu u jesponi u jikkummenta dwar fatti li hu gie a konoxxenza tagħhom, liema fatti kienu jikkoncernaw kif ġia ingħad l-ikbar skandlu ta' korruzzjoni f'pajjizna li seħħ fil-Korporazzjoni Enemalta u li tagħha r-rikorrent kien politikament responsabbli;*
5. *Illi, fil-hames lok u minghajr pregudizzju ghas-suespost, fl-artikolu de quo hemm biss fatti u fair comment dwar kwistjoni t'interess pubbliku massimu, liema kummenti huma accettabbli f'socjeta demokratika, kif ukoll kemm taht il-Ligi ta' l-Istampa u ukoll taht il-Konvenzjoni Ewropea dwar id-Drittijiet tal-Bniedem.*
6. *Salv eccezzjonijiet ulterjuri*

Semghet ix-xhieda ta' **Dr Austin Gatt** mogħtija fl-10 ta' Mejju 2013 fejn indika illi l-unika parti tal-artikolu meritu tal-kawza odjerna illi dwaru huwa hassu malafamat kien is-segħenti:

“ George Farrugia not only kept up email correspondence with interested parties but also met up with Enemalta officials and also allegedly Minister Austin Gatt and oil companies representatives in a bid to ensure the lucrative sale of oil to Enemalta.”

Semghet ix-xhieda ulterjuri ta' Dr Austin Gatt mogħtija fl-24 ta' Gunju 2013.

Rat illi fl-24 ta' Gunju 2013 ir-rikorrent iddikjara illi ma għandhux aktar provi x'jippresenta.

Semghet ix-xhieda ta' **Saviour Balzan** mogħtija fl-14 ta' Ottubru 2013 u rat id-dokumentazzjoni minnu esebita.

Semghet ix-xhieda ulterjuri ta' **Saviour Balzan** mogħtija fid-9 ta' Dicembru 2013 u rat id-dokumentazzjoni minnu esebita.

Rat id-dokumentazzjoni esebita mir-rappresentanta tal-Kamra tar-Rappresentanti, **Anna Brincat**, fl-14 ta' Frar 2014, ossija uħud mix-xhieda prodotti quddiem il-Kumitat Permanenti dwar il-Kontijiet Pubblici in konnessjoni mar-Rapport tal-Awditur Generali msejjaħ '*An Analysis of the effectiveness of the Enemalta Corporation's fuel procurement*'.

Rat ix-xhieda ta' **Raymond Scicluna**, Skrivan tal-Kamra tar-Rappresentanti, mogħtija fis 6 ta' Ottubru 2014 fejn ippresenta faxxikolu voluminuz bix-xhieda kollha illi ingħatat il-Kumitat Permanenti dwar il-Kontijiet Pubblici in konnessjoni mar-Rapport tal-Awditur Generali msejjaħ '*An Analysis of the effectiveness of the Enemalta Corporation's fuel procurement*' kif ukoll il-minuti tal-laqgħat kollha.

Semghet ix-xhieda ta' **Alexander Tranter** mogħtija fis 6 ta' Ottubru 2014 u rat id-dokumentazzjoni minnu esebita.

Rat dokumentazzjoni addizzjonali ppresentata mix-xhud **Raymond Scicluna**, Skrivan tal-Kamra tar-Rappresentanti, fuq talba ta' l-intimati, li gew ippresentati fl-10 ta' Ottubru 2014.

Semghet ix-xhieda ta' Saviour Balzan moghtija fid 9 ta' Marzu 2015 u rat id-dokumentazzjoni ulterjuri minnu esebita.

Semghet ix-xhieda in kontro ezami ta' Saviour Balzan moghtija fil 25 ta' April 2016.

Rat l-affidavit ta' **Christopher Farrugia**, prodott mill-intimat u ppresentat fid 9 ta' Gunju 2016.

Semghet ix-xhieda ta' **George Farrugia** moghtija fit 13 ta' Frar 2017 u fl-24 ta' April 2017 u rat id-dokumentazzjoni minnu esebita.

Rat illi fit 23 ta' Ottubru 2017 l-intimat iddikjara illi ma kellux aktar provi x'jipresenta.

Rat is-sottomissjonijiet bil-miktub ta' l-abbli difensur tar-rikorrent ippresentata fid 29 ta' Dicembru 2017.

Rat is-sottomissjonijiet bil-miktub ta' l-abbli difensur ta' l-intimat ippresentata fit 22 ta' Marzu 2018.

Rat illi fit 22 ta' Marzu 2018 il-kawza giet differita ghallum ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi fis-27 ta' Jannar 2013, meta gie ppubblikat l-artikolu meritu tal-kawza odjerna, ir-rikorrent kien Ministru fil-Gvern ta' dak iz-zmien u kien ghal xi zmien qabel il-Ministru responsabbli mill-Enemalta.

Jirrizulta illi f'Marzu 2013 kien hemm Elezzjoni Generali u ghalhekk dak iz-zmien kienet ghaddejja kampanja elettorali kombattuta hafna.

Jirrizulta illi fil-gimgha ta' qabel il-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna, il-gurnal MaltaToday kien ippubblika storja illi wasslet ghall-investigazzjoni kemm tal-Pulizija kif ukoll tal-Awditur Generali u l-Kumitat Permanenti dwar il-Kontijiet Pubblizi fi hdan il-Kamra tar-Rappresentanti, li kien jirrigwarda tixhim u korruzzjoni fix-xiri taz-zejt da' parte ta' l-Enemalta.

Jirrizulta illi l-hekk imsejha 'Skandlu taz-Zejt', gie imsemmi fl-artikolu meritu tal-kawza odjerna, illi beda fil-faccata ta' quddiem b'titolu '**Oil Scandal**' u, hdejn ritratt ta' persuna involuta f'dana l-iskandlu kollu, George Farrugia, kien hemm il-kliem segwenti:

“After last week’s corruption probe by MaltaToday, we now reveal email correspondence, bank transfers and online chats that show how businessman George Farrugia played a pivotal role in Enemalta’s oil procurement decisions. We also uncover the comfortable business relationship between Frank Sammit, Enemalta officials and George Farrugia.”

Jirrizulta illi l-istorja, illi bdiet fl-ewwel faccata, tkompli billi tirrakkonta l-informazzjoni kollha illi kienet qed tigi ppubblikata fil-gazzetta ta' dakinhar stess.

L-artikolist, dwar George Farrugia, illi kien il-persuna li kien il-pern ta' dana it-tixhim kollu, jghid is-segwenti kliem, li dwarhom ir-rikorrent hassu malafamat:

“ George Farrugia not only kept up email correspondence with interested parties but also met up with Enemalta officials and also allegedly Minister Austin Gatt and oil companies representatives in a bid to ensure the lucrative sale of oil to Enemalta.”

Jirrizulta illi l-ghada illi gie ppubblikat dana l-artikolu, ir-rikorrent cahad kategorikament għall-ewwel darba fil-pubbliku illi huwa qatt iddiskuta ix-xiri ta' zejt ma' George Farrugia. (fol 18)

Ikkunsidrat

Fix-xhieda tieghu, r-rikorrent jishaq is-segwenti dwar dak fuq rappurtat:

“Jiena ghandi nghid għal darba ohra bil-gurament, li jiena George Farrugia ltqajt mieghu kemm fuq xogħol kifukoll anke fuq affarjiet ohra izda fl-ebda mument majjena qatt ltqajt ma' George Farrugia sabiex niddiskutu xi tenders jew xi xiri taz-zejt minn kumpanniji li hu kien agent tagħhom” (fol 13)

Mill-banda l-ohra, jirrizulta illi l-intimat, fix-xhieda estensiva tieghu mogħtija quddiem din il-Qorti, mument minnhom jistqarr is-segwenti:

“Jiena nixtieq nghid illi u nixtieq ninsisti illi imkien ma jien għedt illi b'xi mod jew iehor illi Austin Gatt ha xi flejjes jew ingħata xi flejjes jew xi kickbacks ta' dawn il-kuntratti” (fol 278)

Tali fatt huwa kkonfermat minn George Farrugia stess meta xehed quddiem dina l-Qorti meta fuq domandi li sarulu qal is-segwenti: (fol 340)

“Domanda: Dr Gatt qatt talbet xi commission? Qatt hallastu xi commission?

Risposta: No

Domanda: Austin Gatt b'xi mod meta inti kellimtu kien a konnoxxenza ta' dan l-arrangament illi inti kellem ma' Tancred Tabone u ma' Frank Sammut?

Risposta: No”

George Farrugia, mistoqsi għal darba ohra, qal is-segwenti: (fol 350)

“Domanda: Iva. Ha naghmlu l-affarjiet cari. Qatt iltqajt ma' Dr Austin Gatt u ddiskutejt xi tender tieghu?”

Risposta; Le Tenders fuq fuel u tenders fuq .. le, qatt ma ...”

Ikkunsidrat

Jirrizulta, madanakollu, minkejja c-cahda kategorika ta' George Farrugia, illi korrisondenza mibghuta minn zmien ghall zmien mill-istess George Farrugia lill terzi u li gew esebiti quddiem dina l-Qorti juru li Farrugia kien jaghti x'jifhem li kien vicin mar-rikorrent.

Jirrizulta, di fatti, illi fl-4 ta' Gunju 2003, huwa baghat email lill Tancred Tabone, li dak iz-zmien kien ghadu kif lahaq Chairman tal-Enemalta, fejn qal is-segwenti: (fol 286)

"I am awaiting for a confirmation of a meeting with one of the top managers of Total in Paris. When you have some time I would like to meet you or possibly for lunch to give you the details of a meeting with A.G. and on some issues you should consider to do at MnMa. I wish that I could be of assistance to you in your new position."

Fis-17 ta' Lulju 2003, f'email illi George Farrugia baghat lill certa Naeem Ahmed ta' Trafigura, huwa jghid is-segwenti: (fol 291)

"Most probably MOBC (Med Offshore Bunkering Company) will not be sold for the present time and will be integrated again with Enemalta. The volumes of MOBC are not included above. MOBC presently purchase around 500,000MT of Bunker Fuel and around 75,000MT of gas oil 0.2. THIS WAY WE WILL CONTROL THE MARKET."

About the above subject I have had meeting with the new Minister responsible for Enemalta and with the new chairman who are of the same thinking and are happy to study your opinion before meeting other interested companies. We cannot waste time."

Fit-30 ta' Marzu 2004, f'email illi George Farrugia baghat lill Duncan Mann tat-TOTAL, jghid is-segwenti: (fol 285)

"First of all I would like to thank you for the visit of last week and feel that your visit was very fruitful. As promised I have had the meeting with the Min responsible of Enemalta before the meeting of our friends this morning He is very positive and as soon as I told him that Total is looking to do business on the Aviation with Enemalta, he passed on the comment, "Ask them if they want to take over all our facilities including all the storage we have and run the game"."

Fid-19 ta' April 2004, f'email illi George Farrugia baghat lill Albert Fereres tat-TOTAL, jghid is-segwenti: (fol 284)

"By order of the cabinet, the minister has instructed Tancred not to do any meetings related to any petroleum supplies or projects until further notice. For this reason the meeting with you has been cancelled. I have discussed this issue. I will be meeting the Minister this week to verify the problem. Also have to meet Tancred this evening to re discuss. Suggest that you also call Tancred to ask him why George wants to postpone the visit. Don't push too much as he is under too much pressure."

Jidher, minn tali dokumentazzjoni illi giet a konoxxenza ta' l-intimat rizultat ta' l-investigazzjoni illi kienet qed issir, illi George Farrugia kien qiegħed jagħti impressjoni lill-terzi persuni illi huwa kellu relazzjoni tajba mar-rikorrent u li, rizultat ta' tali relazzjoni, dina setgħet tagevolah fid-diskussjonijiet illi huwa kellu, liema impressjoni toħrog car mill-emails illi kienu fil-pussess ta' l-intimat meta pubblika l-istorja meritu tal-kawza odjerna.

Ikkunsidrat

Jirrizulta illi fil-linja difensjonali ta' l-intimat huwa qajjem id-difiza illi dak illi inkiteb kien sostanzjalment veru u kien jammonta ghal 'fair comment' permessibbli f'kull socjeta demokratika li thaddan bi shih il-liberta' ta' l-espressjoni.

Fil-kawza **Axel Springer AG vs Germany** deciza fis-7 ta' Frar 2012 mill-Grand Chamber tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fl-ismijet, intqal is-segweni dwar id-dritt tal-liberta ta' l-espressjoni w id-dritt tal-gurnalist:

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

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"

L-istess Qorti tkompli tgħid:

81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see Pedersen and Baadsgaard, cited above, § 71). 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.

Dwar id-difiza ta' 'fair comment', f'**Gatley on Libel and Slander** jingħad illi :

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Kif jgħid Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, gie osservat ukoll is-segwenti:

dwar l-aspett tad-difiża tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiża tal-kumment ġust tkun tgħodd, jehtieġ 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 misthoqq; (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 preċiż li jwegġa' lil dak li jkun.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi l-intimat insista mal-Qorti li mkien ma kien qieghed jallega illi r-rikorren *“ha xi flejjes jew inghata xi flejjes jew xi kickbacks ta' dawn il-kuntratti”*.

Jirrizulta, mill-banda l-ohra, illi George Farrugia, illi kien il-pern ta' l-iskandlu taz-zejt li harget fil-berah rizultat ta' rappurtagg tal-gurnal MaltaToday gimgha qabel l-artikolu meritu tal-kawza odjerna u li ngata l-Mahfra Presidenzjali sabiex ikun jista jixhed kontra persuni ohra involuti fl-iskandlu, kien ripetutament, f'korrispondenza illi huwa kien ghamel ma' terzi u li spiccat f'idejn l-intimat, jaghti x'jifhem illi huwa kellu relazzjoni tajba hafna mar-rikorren, dak iz-zmien Ministru, u li ser jintervjeni mieghu għall-assistenza.

Jirrizulta, mill-banda l-ohra wkoll, illi r-rikorren cahad kategorikament u fil-pubbliku illi huwa qatt ddiskuta xi kuntratti ta' zejt ma' George Farrugia, izda jirrizulta li tali cahda saret **l-ghada** illi gie ippubblikat l-artikolu meritu tal-kawza odjerna, u certament tali cahda kienet dettata mill-fatti kif prodotti mill-intimat fl-artikolu meritu tal-kawza odjerna.

Jirrizulta, madanakollu, illi l-intimat kellu fil-pussess tieghu emails varji ta' George Farrugia illi setghu, *prima facie*, jaghtu x'jifhmu illi r-rikorren seta kien qieghed jintuza minn l-istess George Farrugia sabiex dana jiehu vantagg.

Jirrizulta, finalment, illi l-paragrafu tal-artikolu illi dwaru jilmenta r-rikorren di fatti jaghti x'jifhem illi kien George Farrugia illi kellu kuntatti ma' hafna partijiet interessati li jinkludu wkoll *“also allegedly Minister Austin Gatt”*, izda mkien ma' l-artikolu jimputa xi agir hazin jew korrot da' parte tar-rikorren, kif del resto kkonferma wkoll l-istess intimat fil-Qorti stess.

Il-Qorti ma tistax ma tosservax illi gurnalizmu investigattiv huwa mehtieg għall-socjeta demokratika hajja u b'sahhtiha u ghandu jigi protett minn dawna l-Qrati. Wara kollox, kif stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** deciza fit-3 ta' Frar, 2012:

“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f’socjeta’ demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa’ allegazzjoni mhux pruvata kif trid il-Ligi. F’dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista’ wkoll ikun tollerat.”

Fl-ahhar nett, il-Qorti ma tistax ma tesprimix id-disappunt taghha dwar id-dewmien esagerat fil-kawza odjerna, ddetтата principalment mill-fatt illi l-intimat dam aktar minn erbgħa snin jressaq il-provi tieghu, liema dewmien ma jagħmel ebda gid lis-socjeta u s-sistema gudizzjarja illi tant jilmntaw dwaru kullhadd mingħajr ma jifhmu min attwalment huwa l-kawza tad-dewmien, u tali disappunta huwa anke dettat mill-fatt illi l-provi setghu facilment jittressqu minnufih u mhux bicca bicca u ma kienx hemm il-htiega illi l-kawza tittawwal inutilment – dana ser jigi rifless fil-kap ta’ l-ispejjez.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi prodotti,

Wara illi rat is-sottomissjonijiet finali 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,

Kull parti ghandha tbaghti l-ispejjez taghha.

Magistrat Francesco Depasquale

Rita Sciberras

Deputat Registratur