



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis hamsa (5) ta' Lulju 2018

Rikors Numru 415/14 FDP

**Patrick Dalli
(ID 521555M)**

vs

Caroline Muscat

Il-Qorti:-

Rat ir-rikors promotur ippresentat fit-22 ta' Dicembru 2014 fejn ir-rikorrenti, filwaqt illi ghamel referenza ghall-artikolu ippubblikat fuq is-sit www.timesofmalta.com redatt mill-intimata intitolat “**Minister shuns questions over husband’s property**” fit 28 ta’ Novmebru 2014, talab lill dina l-Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tieghu peress illi jikkontjeni allegazzjonijiet u insinwazzjonijiet foloz u malafamanti fil-konfront taghha intizi sabiex joffendu l-unur u l-fama tieghu u jesponuh ghar-redikolu u disprezz tal-pubbliku. Huwa talab lill-Qorti tikkundanna lill-intimata thallas danni a tenur ta’ l-artikolu 28 tal-Kap 248.

Rat l-artikolu meritu tal-kawza odjerna illi deher fuq is-sit elettorniku www.timesofmalta.com il-Gimgha, 28 ta’ Novembru 2018 fil-00.01am fejn jidher artikolu intitolat ‘**Minister shuns questions over husband’s property**’ fejn, taht ritratt tal-Ministru Dr Helena Dalli, mart ir-rikorrenti, kien hemm miktub is-segwenti:

Equal Opportunities Minister Helena Dalli walked away from journalists who asked questions on works at the Żejtun property owned by her husband’s company, Pada Builders Limited.

She shunned Times of Malta questions twice on whether she would publish the promise of sale agreement on the controversial Żejtun property, saying the information requested had been tabled in Parliament the day before.

However, no such information was available in Parliament at the time journalists approached the minister. The government only tabled the documents on her behalf later.

The document in Parliament is not the promise of sale agreement, according to a notary contacted by Times of Malta.

It is a private document referring to an existing promise of sale agreement signed in January 2012 between the minister's husband, Patrick, on behalf of Pada Builders Limited, and the buyer.

“No transfer of property could result from such a document,” the notary said.

The document makes it clear that Pada Builders Limited, a company in which Dr Dalli's husband owns 99 per cent of the shares, remains the owner of the property.

The minister said in Parliament on Wednesday she had no shares in the company, was not a director and had “no right” to participate in its operations. Dr Dalli declared the company in her ministerial declaration of assets because half her husband's assets belong to her through the community of acquests but she said this would only kick in if they separated or he passed away.

But the notary said the community of acquests kicked in at the start of the marriage.

When asked how many other properties were ‘hidden’ under her husband's various companies, Dr Dalli refused to elaborate, saying the information was easily traceable. It is not. (sottolinjar tar-rikorrent)

Getting the information from the Public Registry would result in a bill of hundreds, potentially thousands, of euros.

Moreover, four companies listed in her declaration of assets were not in line with the requirements of the Companies Act to submit annual audited accounts.

An up-to-date picture of their performance could therefore not be assessed.

Up to 2012, millions of euros in assets were held by the companies, which declared a minimal profit, some even a loss. (sottolinjar tar-rikorrent)

Both the minister and her husband declared they were unaware of works on the site served with an enforcement notice by the planning authority. Their residential home is a few metres away.

The existing permit application being considered by the planning authority is in the name of Mr Dalli, who is seeking the sanctioning of all illegalities on site.

Mr Dalli called Times of Malta yesterday pointing out that he had challenged the leader of the Opposition on Facebook to a TV debate on the issue.

Rat ir-risposta ta' l-intimata ppresentata fil 15 ta' Jannar 2015 fejn laqgħet għal dak mitlub billi qalet is-segwenti:

1. *Illi preliminarjament l-attur irid jindika is-silta jew siltiet ta' l-artikolu de quo li skontu hija jew huma malafamanti fil-konfront tiegħu u qabel ma jagħmel dan, din il-kawża ma għandhiex titkompla;*
2. *Illi subordinatament u fil-mertu, it-talba attrici għandha tigi michuda għaliex in kwantu għall-fatti miġjuba fl-artikolu de quo, dawn il-fatti huma sostanzjalment veri u in kwantu għall-kummenti miġjuba fl-istess artikolu, dawn il-kummenti huma gusti u perfettament permissibbli fis-sistema guridiku-legali ta' dan il-pajjiż.*

Rat illi fit 2 ta' Frar 2015 ir-rikorrent talab illi l-kawża odjerna timxi flimkien mal-kawża Rikors Nru 416/14 FDP fl-istess ismijiet.

Semgħet ix-xhieda tar-rikorrent **Patrick Dalli** mogħtija fit 23 ta' Marzu 2015 u fil 5 ta' Ottubru 2015.

Semgħet ix-xhieda tal-**Perit Brian Ebejer** mogħtija fit 12 ta' Novembru 2015.

Semgħet ix-xhieda ta' **Jason Desira** mogħtija fis 27 ta' Gunju 2016 u fl-24 ta' Ottubru 2016 u rat id-dokumentazzjoni minnu esebita, ossija:

- kuntratt ta' bejgħ datat għoxrin (20) ta' Novembru 2015 (fol 69) tal-fond deskritt bhala "Farmhouse", St. Thomas Street, Zejtun,
- permess relatat ma' propjeta ta' oħt Jason Desira minn fejn l-istess Desira gab il-hamrija li tqiegħed fil-Farmhouse li kien akkwista mingħand ir-rikorrent,
- konvenju bejn ir-rikorrent u omm Jason Desira, Liliana Bugeja, datat 7 ta' Frar 2012 (fol 81),
- konvenji oħra ta' tigidid tal-konvenju datati 23 ta' Lulju 2012 (fol 82), 22 ta' Lulju 2013 (fol 83), 2 ta' Lulju 2014 (fol 84) u 26 ta' Ottubru 2015 (fol 85) u
- permess mahrug lill Jason Desira fis 17 ta' Awissu 2016 "*To sanction alterations and extension of existing farmhouse*", Permess Nru 3103/12.

Rat id-decizjoni tat-Tribunal ta' Revizjoni ta' L-Ambjent u L-İpġjanar datata 25 ta' Frar 2016 u esebita mir-rikorrent fis 27 ta' Gunju 2016 (fol 35)

Rat illi fil 25 ta' Settembru 2017 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semgħet ix-xhieda ta' l-intimata **Caroline Muscat** mogħtija fid 9 ta' Novembru 2017 u fid 29 ta' Jannar 2018 u rat id-dokumentazzjoni minnha ppresentata inkluz dokumentazzjoni relatati mal-permessi tal-MEPA u artikoli ppubblikati fuq is-sit elettroniku www.timesofmalta.com fit-23 ta' Marzu 2015 (fol 139), fl-14 ta' Novembru 2014 (fol 142) u fis 6 ta' Dicembru 2014 (fol 144).

Semgħet ix-xhieda ta' **Kurt Sansone** mogħtija fid-29 ta' Jannar 2018.

Rat id-dokumentazzjoni esebita mill-intimata fil-31 ta' Mejju 2018, ossija dokumentazzjoni in konnessjoni mal-varji kumpanniji propjeta tar-rikorrent.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet illi saret fil-31 ta' Mejju 2018, wara liema trattazzjoni il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta illi r-rikorrent huwa ir-ragel ta' Dr Helena Dalli, illi kienet Ministru fil-Gvern tal-gurnata meta gie ppubblikat l-artikolu meritu tal-kawza odjerna fis-sena 2014, u ghadha Ministru tal-Gvern illum il-gurnata wkoll.

Jirrizulta illi r-rikorrent huwa persuna fin-negozju ta' propjeta' fost affarjiet ohra, u ghandu varji kumpanniji relatati ma' tali negozju.

Jirrizulta illi s-socjeta Pada Builders Limited, illi ghaliha jidher bhala rapprezentant ir-rikorrent Patrick Dalli, kienet propratarja ta' fond ossija razzett gewwa 13, Triq San Tumas, Zejtun.

Jirrizulta illi fl-4 ta' Jannar 2012 is-socjeta Pada Builders Limited dahhlet fi konvenju ma' Jason Desira ghall bejgh tal-fond ghall-prezz ta' €931,749.

Jirrizulta illi minn dakinhar tal-konvenju sal-20 ta' Novembru 2015, Jason Desira baqa' jaghmel pagamenti rateali tal-prezz tar-razzett u fl-20 ta' Novembru 2015, wara illi l-import kollu tal-prezz miftiehem thallas, sar il-kuntratt finali ta' akkwist, fejn is-socjeta Pada Builders Limited bieghet il-propjeta' lill Jason Desira.

Jirrizulta illi permezz ta' Enforcement Order Nru 563/11 l-Awtorita ghall-Ippjanar kienet harget Ordni ta' Infurzar fejn gie nnutat is-segweni:

Ghandek zvilupp mhux skont il-permess PA 5875/01 datat 20 ta' Mejju, 2003 u dan billi nbidel l'uzu ta' kamra tas-sodda (Bedroom 2) u nbena tarag mis-sular ta' isfel ghal fuq il-bejt. sar skavar estensiv fil-partijiet tal-gonna (paved area) u taht il-kamra tas-salott biex b'hekk nholoq basement garage li gie msaqqaf bil-planki tal-konkos nbena "swimming pool" li huwa ikbar u b'kunfigurazzjoni differenti minn dak approvat nbena hajt tal-franka gholi tmien filati minflok tas-sejiegh immarkat elevation B fuq wara tas-sit nbena hajt tal-appogg fuq in-naha ta' wara tas-sit immarkat Sec B-B fil-pjanti approvati gholi iktar minn 1.2m nbnet il-kamra tal-hasil (washroom) fil-livell tal-bejt ikbar milli approvata nfethet bokka (skylight), u nbnew zewgt ikmamar u kuritur fil-ivel tal-bejt

Jirrizulta illi fis-7 ta' Awissu 2012 giet ippresentata applikazzjoni ghal 'Full development permit' mir-rikorrent "To sanction alterations and extension of existing farmhouse". (fol 86)

Jirrizulta illi tali permess, waqt il-mori tal-kawza odjerna, gie michud fil-25 ta' Frar 2015 u ghalhekk ir-rikorrent intavola appell minn tali rifjut fis-16 ta' Marzu 2015.

Jirrizulta illi eventwalment, fil 25 ta' Frar 2016, waqt il-mori tal-kawza odjerna, ntlaga' l-appell tar-rikorrent (fol 125) u fis 17 ta' Awissu 2016 inhareg il-permess 'To sanction alterations and extension of existing farmhouse', liema permess inhareg f'isem Jason Desira. (fol 86)

Ikkunsidrat

Jirrizulta illi fit-13 ta' Novembru 2014, ossija aktar minn gimghatejn qabel d-data tal-artikolu meritu tal-kawza odjerna, l-intimata kitbet artikolu fuq is-sit www.timesofmalta.com intitolat '**Minister's husband "has no knowledge of illegal work"**', liema artikolu huwa l-meritu ta' kawza fl-istess ismijiet, Rik Nru 416/14FDP, illi qed timxi flimkien mal-kawza odjerna u li qed tigi deciza llum ukoll.

Jirrizulta illi f'tali artikolu (Rik Nru 416/14 – fol 2), l-intimata qalet is-segwent:

Work continues on a farmhouse in Żejtun served an enforcement notice because of infringements but developer Patrick Dalli claims he has no idea workers are on site.

Work has been proceeding on the site for at least a week but Mr Dalli, husband of Consumer Affairs Minister Helena Dalli, told Times of Malta he had no knowledge of it. Mr Dalli questioned whether he was being singled out because of who he was.

"To tell you the truth I didn't know I had workmen on site.

"I had signed a promise of sale agreement on that property so I haven't paid attention.

"Why is it important for Times of Malta to ask me? Is there something behind it? Is it because of who I am?" Mr Dalli said.

It was pointed out to him that journalists have a responsibility to get all sides of the story and therefore he was being treated in the same way as anyone else.

He was asked to explain how work was proceeding on site despite an enforcement notice having been issued by the planning authority and an application to sanction infringements on site that is still awaiting a decision.

"Oh, so you happened to call me," he replied.

"Well, you have your rights and I have mine. Tell me again who you are?" Mr Dalli asked.

The infringements on site include the construction of a swimming pool larger than stated in the permit as well as excavations in the garden's paved area and under the living room to create a basement garage.

The planning authority notice refers also to change of use of the second bedroom and the creation of a staircase from the first floor to the roof.

A washroom at roof level was built that was larger than permitted plus an additional two rooms and a corridor on the same level that were not authorised.

A skylight was also created without a permit, and an additional supporting wall was built at the back of the building higher than permitted, according to the enforcement notice.

The site in question is located outside the development zone (ODZ) within the area known as Hal Tmien, limits of Żejtun.

It lies adjacent to a cluster of buildings identified as a category two settlement – a small part of the building falls within the boundary of this settlement.

An application submitted in 2012 requests the planning authority to sanction the unauthorised interventions. In the process, the ODZ policy was revised, so Mr Dalli's architect requested a suspension of the decision so the application could be considered under the new rules.

The planning authority's case officer still recommended refusal, because certain criteria were not met. But until that decision is taken, work on site continues.

The case officer's report notes that the new ODZ policy requires careful consideration of the area to be extended in relation to the size and proportions of the original site. The report also points out the new policy allows for the construction of minor extensions to existing buildings so long as they do not increase the overall existing floor space to over 150 square metres. The request for sanctioning involves additional floor space of 120 square metres, resulting in a total building floor space of 350 square metres, according to the case officer's report.

Jirrizulta illi l-ghada, 14 ta' Novembru 2014, dejjem fuq is-sit www.timesofmalta.com, izda din id-darba miktub minn Kurt Sansone, deher artikolu iehor (fol 142), intitolat "**Opposition wants Helena Dalli to shoulder responsibility for illegal house works**", fejn l-artikolist kiteb is-segwenti:

The Opposition is calling on Equal Opportunities Minister Helena Dalli to shoulder political responsibility for her husband's illegal development in Zejtun.

Opposition planning spokesman Ryan Callus said it was ironic that the Dallis expected preferential treatment when the minister's portfolio included equal opportunities.

Mr Callus said it was unbelievable that Patrick Dalli - Dr Dalli's husband- said he did not know that workers were carrying out construction work on the site.

"This is not the way to lead by example," Mr Callus said.

Asked to clarify what he meant by shouldering political responsibility, Mr Callus said when former PN president Victor Scerri had built a farmhouse in Bahrija, the then Labour Opposition had asked for his resignation.

"I don't agree with Dr Scerri's development but the difference is that his development had passed through all the legal process while in this case the planning authority is still evaluating a request for sanctioning as illegalities are continuing," Mr Callus said.

Without directly calling for the minister's resignation, Mr Callus said he was not holding his breath that Dr Dalli would resign like Dr Scerri had done.

The building has an enforcement order on it because of significant illegalities on the site.

However, Times of Malta revealed this week that works on the property were continuing despite the 2011 enforcement notice.

Mr Dalli had said the building was being sold and a promise of sale agreement had been signed.

He questioned why the newspaper's was following the story.

Mr Callus said it was unacceptable for journalists to be treated in this way.

During the press conference, Jason Desira, who claimed to be the person buying the property, insisted it was he who had deposited soil in the property but denied there were any illegalities.

"I do not know why you are attacking the minister. This property is fine according to the new planning rules," he told the PN representatives in the presence of journalists.

"There are no works on site," he insisted.

However, Mr Desira did not comment when confronted by timesofmalta.com that had witnessed workers on the property over the past two days.

The planning authority has not yet sanctioned the illegalities.

Jumejn wara, fis-16 ta' Novembru 2014, l-intimata tellghet artikolu iehor, fuq is-sit www.timesofmalta.com, intitolat "***Żejtun property not in Helena' Dalli's assets lists***", fejn qalet is-segwenti:

The Żejtun farmhouse owned by the husband of Equal Opportunities Minister Helena Dalli, where work was taking place in spite of an enforcement notice, was not listed in her declaration of assets.

The ministerial declaration requires a listing of properties she owns as well as those belonging her spouse, Patrick Dalli.

She lists only the house she lives in, a few metres down from the development

Yet she lists only the house she lives in, a few metres down from the development, as well as her office in Żabbar.

The Żejtun farmhouse was slapped with an enforcement notice in 2011, because of infringements on the site.

However, this newspaper revealed last Thursday that works on the property were continuing.

Mr Dalli said he had no idea workers were on site, even though the farmhouse is located on the same street where he lives. Furthermore, the vehicles being used belong to a company he owns – Pada Builders Ltd. The company is listed in the minister's declaration of assets.

The Opposition is calling on the minister to shoulder political responsibility for her husband's development in Żejtun.

The site in question is located outside the development zone within the area known as Hal-Tmien, limits of Żejtun.

The building lies adjacent to a cluster of buildings identified as a category two settlement – a small part of the building falls within the boundary of this settlement.

When contacted to explain why he was proceeding with work on site without planning permission, Mr Dalli questioned whether he was being singled out because he was the minister's husband.

He told this newspaper that he had a promise of sale agreement to sell the property, but lawyers who spoke to The Sunday Times of Malta said that in the eyes of the law, he is still the owner of the property and therefore accountable for any infringements.

The infringements include the construction of a swimming pool larger than permitted, as well as excavations in the garden's paved area and under the living room to create a basement garage.

Two rooms were built without a permit, and a washroom at roof level was built larger than approved plans.

The Sunday Times of Malta asked the planning authority what action it would be taking against the works, but no reply was received by the time of going to print.

Jirrizulta, mill-kontenut tal-artikolu, illi dana l-artikolu deher ukoll fuq is-Sunday Times of Malta ta' dakinhar ukoll.

Il-Hadd ta' wara, 23 ta' Novembru 2014, l-intimata regghet tellghet artikolu iehor fuq is-sit www.timesofmalta.com, intitolat '**No easy way to find the assets of minister Dalli**', fejn l-intimta qalet is-segwenti:

Minister Helena Dalli's claim that the assets she declared 'hidden' under companies could easily be verified by the public turns out to be an expensive and arduous process, The Sunday Times of Malta can reveal.

The Civil Rights Minister has refused to answer this newspaper's questions on the number of properties held under the companies listed in her declaration of assets.

The question was raised after she declared that she did not own the Żejtun property where works were carried out despite an enforcement notice by the planning authority.

Dr Dalli said the property was not owned by her but by one of her companies, Pada Builders Limited. When pressed why she had not declared this property in her declaration of assets, she said the company's assets were "freely traceable" through the public registry and the Malta Financial Services Authority.

The Sunday Times of Malta went through the process any citizen would have to undergo if attempting to check the real assets held by a minister through the companies listed in their declaration of assets.

The four companies Dr Dalli listed – Pada Builders Limited, Elcar Developments Limited, PR Company Limited and Blacktop Limited – had not submitted updated audited accounts to the MFSA in defiance of the Companies Act. This was confirmed by the MFSA.

An up-to-date picture of these companies' performance could therefore not be assessed. In any case, specific properties held by the companies cannot be traced through audited accounts.

The Sunday Times of Malta then went to the public registry but any citizen attempting to find out what properties were held by the four companies held by the minister would have to fork out hundreds, possibly thousands, of euros.

When this newspaper revealed that works were being carried out on her Żejtun property on which Mepa had served an enforcement notice in 2011, Dr Dalli said she was not aware of the works even though the property stands a few metres from where she resides.

The vehicles on site while illegal works were ongoing belong to Pada Builders Limited. The minister said a promise of sale agreement had been made on the farmhouse and therefore she was not responsible.

Yet, the Opposition pointed out that the property still belonged to the minister until a transfer of ownership is made, and called for her resignation.

She has so far refused to heed calls to publish the promise of sale agreement.

Meanwhile, the Prime Minister yesterday continued to stand by his minister, saying the works were being carried out by the person who was buying the property. He said he had been informed this was the norm when there was a promise of sale agreement.

However, this goes against normal procedure where “the sale of a property is recognised when the sales contract is signed and the title passes to the purchaser” – this excerpt is taken from the audited accounts of one of the minister's several construction companies.

As to the machinery on site, the Prime Minister said there was an engineer's report confirming that this machinery was inoperable and had been dumped on site. The engineer's report has not been made public.

Meanwhile, a Mepa spokesman told The Sunday Times of Malta that a site inspection showed “no further development works took place following the issuing of enforcement notice”, despite the evidence reported.

Jirrizulta, mill-kontenut tal-artikolu, illi dana l-artikolu deher ukoll fuq is-Sunday Times of Malta ta' dakinhar ukoll.

Jirrizulta illi fit-28 ta' Novembru 2014, l-intimata tellgħet l-artikolu meritu tal-kawza odjerna, intitolat '**Minister shuns questions over husband's property**', il-kontenut ta' liema artikolu gie riprodott aktar 'l fuq.

Jirrizulta, finalment, illi fid 29 ta' Novembru 2014, l-intimata tellgħet artikolu iehor, din id-darba intitolat '**MEPA commission 'broke law' on Dalli**', fejn l-intimata qalet is-segwent:

The Nationalist Party said yesterday the environment planning commission broke the law when it heard the case regarding Patrick Dalli's application to sanction illegalities on a controversial Żejtun farmhouse.

The farmhouse, located outside the development zone, is owned by a company belonging to Mr Dalli, the husband of Equal Opportunities Minister Helena Dalli.

It has been at the centre of a controversy after this newspaper revealed work was being carried out on the site that was served with an enforcement notice due to a list of illegalities.

The recently appointed commission, one of the planning authority's boards, heard the case on November 13 and then put off the case at the request of Mr Dalli, the applicant. Members include a Labour Party candidate and the former CEO of a planning consultancy.

Nationalist Party planning spokesman Ryan Callus said it was "scandalous" that no member of the commission raised any questions related to the works done on the Żejtun farmhouse.

He said this was in breach of the Environment and Planning Act, which laid down that any application to sanction illegalities should be refused immediately if an enforcement notice prohibiting further activity on the site was breached.

"The commission heard and acted on this case despite the scandal widely reported.

"Its members never asked any question on this. This is a commission recently appointed by the Prime Minister. He too has a lot to answer for," Mr Callus said.

The PN wrote to the Ombudsman asking his office to investigate the alleged breach.

Both Mr Dalli and the minister have said they were not aware of works being done.

Dr Dalli walked away from journalists when they asked questions about the property during two events on Thursday.

She referred journalists to information she had tabled in Parliament the previous evening. In fact, the documents were still in government whip Carmelo Abela's possession. He tabled them in the afternoon of the following day.

However, what was tabled was not the promise of sale agreement, as the minister had said, but an extension of it, lacking the details such an agreement would contain.

Mr Dalli has challenged the Opposition leader to a TV debate but Mr Callus stressed the minister had to carry political responsibility. He noted Dr Dalli evaded media questions and opted to speak on the adjournment in Parliament, when questions were not allowed.

The Prime Minister told Times of Malta yesterday the minister had acknowledged that "things could have been done better" and, therefore, an apology was not necessary.

Speaking in Parliament on Wednesday, Dr Dalli demanded that the Opposition take political responsibility for the "lies" on the issue.

She said she had no shares in her husband’s firm, she was not a director and had “no right” to participate in its operations, adding that the community of acquests would only kick in if she separated from her husband or he died.

This was described by a lawyer as a “legal heresy”, as the community of acquests began at the start of the marriage.

Jirrizulta illi dawna l-artikoli kollha ghadhom accessibbli fuq is-sit www.timesofmalta.com sa l-lum il-gurnata.

Ikkunsidrat

Jirrizulta illi fil-mori tal-kawza, ir-rikorrent ressaq bhala provi, apparti x-xhieda tieghu, dik tal-Perit Brian Ebejer u ta’ Jason Desira, filwaqt illi l-intimata, apparti x-xhieda taghha, ressqet bhala provi lill Kurt Sansone kif ukoll serje ta’ dokumentazzjoni mahruqa mill-Malta Financial Services Authority (MFSA) relatati ma’ rapporti finanzjarji ta’ varji kumpanniji allegatament tar-rikorrenti.

Jirrizulta illi l-intimata qajjmet, bhala difiza principali taghha, il-fatt illi “*il-fatti huma sostanzjalment veri*” u illi “*dawn il-kummenti huma gusti u perfettament permissibbli fis-sistema guridiku-legali ta’ dan il-pajjiz*”.

Il-Qorti thoss illi, qabel ma taghmel il-konsiderazzjoniet taghha, ikun opportun illi taghmel xi referenzi ghall-posizzjoni legali fuq tali difiza.

Dwar id-dritt tal-gurnalist illi jirrapporta dak li jidhirlu xieraq u korrett, il-Qorti thoss illi ghandha taghmel referenza ghall-kawza '*Axel Springer AG vs Germany*', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, fejn 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-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.

Fuq ir-rwol li ghandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti 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”.

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' dawna l-fatti, il-Qorti ghandha tiehu hsieb 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”*.

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.*

Dwar l-uzu ta' 'portals' elettronici bhalma hija s-sit www.timesofmalta.com meritu tal-kawza odierna, fejn jidhru stejjer u jsiru l-kummenti dwarhom, il-Grand Chamber tal-Qorti Europea ghad-Drittijiet tal-Bniedem fl-ismijiet **Delfi AS vs Estonia** deciza fis 16 ta' Gunju 2015 qalet is-segwenti:

.... because of the particular nature of the Internet, the “duties and responsibilities” that are to be conferred on an Internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher, as regards third- party content.

Dwar id-difiza tad-dritt illi jgharraf lill-pubbliku, kif mqajjma mill-intimat, l-istess Qorti tghaddi biex taghmel is-segweni osservazzjoni

“.... the Court has emphasised 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. 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.

133. Moreover, the Court has previously held that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general. At the same time, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press.

134. In considering the “duties and responsibilities” of a journalist, the potential impact of the medium concerned is an important factor and it is commonly acknowledged that the audiovisual media often have a much more immediate and powerful effect than the print media. The methods of objective and balanced reporting may vary considerably, depending among other things on the media in question.

Dwar gurnalizmu investigattiv, il-Qorti taghmel referenza ghal dak illi qalu l-qrati taghna, dwar gurnalizmu investigattiv, u ghalhekk issir referenza ghal illi 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.”

Dwar il-livel ta’ kritika permessa dwar ir-rikorrent, il-Qorti tibda biex taghmel referenza ghal dak li gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbracjata 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.

Dwar x'nhu persuna privata, ossija “private individual”, il-Qorti taghmel referenza ghall-kawza deciza mill European Court of Human Rights fis-sentenza fl-ismijiet, NOVAYA GAZETA V VORONEZHE v. RUSSIA deciza fl-20 ta' Gunju 2011 fejn, dwar “private individuals” kellha dan xi tghid:

The Court points out that private individuals lay themselves open to scrutiny when they enter the public arena and considers that the issue of the proper use of public funds is undoubtedly a matter for open public discussion.

Dana jfisser illi biex persuna privata tkun soggetta ghall skrutinju, huma jkunu jridu jkunu dahlu fl-arena pubblika u dana billi jinvolvu ruhhom f'affarjiet illi minn natura taghhom huwa pubblici.

Dwar kummenti illi jsiru fl-artikolu, l-Qorti, taghmel referenza ghall-gurisprudenza lokali ossija il-kawza **Nutar Mark Sammut vs Daphne Caruana Galizia**, deciza mill-Qorti tal-Appell (Sede Inferjuri) fid 9 ta' Jannar 2008, fejn dik il-Qorti, wara illi qieset il-gurisprudenza Ewropeja, fosthom dik fuq imsemmija, taghmel is-segwenti osservazzjonijiet dwar il-liberta' ta' l-espressjoni u l-limitazzjonijiet taghha:

Sa fejn hu maghruf ma jezisti ebda provvediment f' ebda ligi, kompriza l-Konvenzjoni Ewropeja, u l-ebda kazistika ta' dehen li tikkondona, taht l-iskuzanti ta' certu stil jew kitba, l-uzu, imqar b' cajta, minn xi artikolist, anke ta' kalibru, ta' kliem jew espressjonijiet offensivi sempliciment in omagg ghal manifestazzjoni libera tal-hsieb. Dan aktar u aktar fejn, bhal f' dan il-kaz, l-informazzjoni divulgata tal- fatt ut sic tinsab akkompanjata minn informazzjonijiet ohra kkummentati, bla ebda utilita` ghall-ahjar komprensjoni ta' l-informazzjoni jekk mhux biex tinferixxi b' mod ripunjanti fuq il-karattru ta' l-appellat, u l-ghazliet tal-prestazzjonijiet professjonali tieghu lil certu partit politiku.

Dik il-Qorti tkompli biex tikkwota l-Gatley “On Libel and Slander” fejn jghid:

“It is immaterial whether the imputation is conveyed by words of assertion or suggestion, or by words used in a declarative or interrogative form. A defendant is liable for insinuation as well as for explicit statement, for insinuation may be as defamatory as direct assertion and even more mischievous. The tendency and effect of the language, not its form, is the criterion. A defendant cannot defame and escape the consequences by any dexterity of style”.

Ikkunsidrat

Jirrizulta l-ewwel u qabel kollox, illi l-artikolu ppubblikat fit-28 ta' Novembru 2014, ghalkemm meritu tal-kawza odjerna bhala artikolu wiehed biss, ghandu jitqies fil-kuntest ta' artikoli ohra ppubblikati fejn ir-rikorrent dejjem jigi deskritt bhala ir-ragel tal-Ministru Dr Helena Dalli, meritu tal-kawza ohra illi qed tigi deciza llum, w il-fatti illi kienu gew allegati originalment fl-artikolu tat 13 ta' Novembru 2014 u sussegwentement ripetuti varji drabi mill-intimata fl-artikoli illi deheru sussegwentement – sitta b'kollox fuq medda ta' ftit aktar minn gimghatejn, hamsa minnhom redatti mill-intimata.

Jirrizulta illi r-raguni ghaliex l-artikoli kollha bdew jinkitbu kien illi fit 13 ta' Novembru 2014, l-intimata, f'artikolu intitolat “**Minister’s husband ‘has no knowledge of illegal work’**” allegat illi

“works continues on a farmhouse in Zejtun served an enforcement notice because of infringements but developer Patrick Dalli claims he has no idea workers are on site.”

Jirrizulta illi dana kien il-bazi illi wassal ghall-pubblikazzjoni ta' sitt artikoli, fejn giet attakata anke il-mara tar-rikorrent, il-Ministru Dr Helena Dalli, u sahanitra giet attakkata mill-Partit Nazzjonalista, tramite il-Membru Parlamentari Ryan Callus, fejn insinwa ukoll illi kellha turrizenja.

Jirrizulta, madanakollu, illi kif stqarr Jason Desira, illi kien akkwista l-post minghand il-kumpannija Pada Builders Limited fis-sena 2012, meta xehed fis 27 ta' Gunju 2016:

Xoghlijiet ma ghamilt xejn jiena; ha nghidlek x' ghamilt, fix-xitwa kienet qed issir hsara kbira fuq il-bini jigifieri; u li kont qed naghmel mill-bjut kien qed jaqa' hafna ilma u l-gebel gie zibel bil-hdura u hekk; u ghedt ha nkahhal il-bitha ta' wara fejn rawhom jigifieri dak inhar; u kont ser naghmel il-katusi. Dak li kont ser naghmel.

Jirrizulta illi Desira kien ikkonferma dana pubblikament waqt Konferenza Stampa illi kien zamm il-Membru Parlamentari Ryan Callus ezatt wara il-pubblikazzjoni tal-artikolu tat-13 ta' Novembru 2014, liema fatti kienu gew rappurtati fl-artikolu sussegwenti illi deher fl-14 ta' Novembru 2014, izda tali dikjarazzjoni geit skartata mill-intimata.

L-istess Desira jistqarr ukoll illi ohtu kienet waqqghet il-post taghha u kien hemm hamrija li kellha titnehha u, sabiex dina ma timremiex u tintuza fil-farmhouse illi huwa kien xtara minghand is-socjeta Pada Builders Limited, huwa kien iddeposita truck hamrija fuq il-hamrija illi kien hemm madwar il-farmhouse.

Jirrizulta wkoll, minn artikolu ta' l-intimata stess ippubblikat fit 23 ta' Novembru 2014, (Rik Nru 416/14 – fol 4) illi :

Meanwhile, a MEPA spokesman told The Sunday Times of Malta that a site inspection showed “no further development works took place following the issuing of enforcement notice” despite the evidence reported.

Jirrizulta, madanakollu, illi l-intimata qatt ma tellghat lill rappresentant tal-MEPA quddiem il-Qorti sabiex tigi kkonfermata jew kontestata tali assersjoni lilha dikjarata u minnha rappurtata fit 23 ta' Novembru 2014.

Jirrizulta, ghalhekk, illi a differenza ta' dak allegat mill-intimata, ma kienu qed isiru ebda xogholijiet fis-sit ossija farmhouse taz-Zejtun bi ksur tal-enforcement notice illi kien hemm fuq tali propjeta.

Jirrizulta wkoll illi l-intimata kienet a korrent tal-fatt illi dan gie lilha kkonfermat mill-MEPA stess u gie minnha rappurtat fit 23 ta' Novembru 2014, izda xorta wahda baqghet tikteb fl-artikoli sussegwenti, inkluz l-artikolu meritu tal-kawza odjerna, illi kienu qed isiru xogholijiet illegali fil-

farmhouse.

Ikkunsidrat

Jirrizulta illi l-intimata, fl-artikolu taghha, allegat illi

When asked how many other properties were ‘hidden’ under her husband’s various companies, Dr Dalli refused to elaborate, saying the information was easily traceable. It is not

Jirrizulta illi l-intimata, bil-kelma “*hidden*”, minnha mdahhla fis-sentenza fuq imsemmija, tat x’tifhem lill qarrej ordinarju illi r-rikorrent qieghed juza l-kumpanniji tieghu sabiex jahbi l-assi tieghu minn skrutinju ta’ min huwa interessat, liema kelma “*hidden*” uzata intenzjonalment sabiex taghti x’tifhem illi r-rikorrent kellu xi affarjiet x’jahbi.

Jirrizulta, madanakollu, kif del resto minnha ddikjarat wkoll, illi d-diffikulta’ sabiex jinstabu l-propjeta ma kienetx dovuta ghal fatt illi l-propjeta kienet ‘mohbija’, kif hija allegat, izda kienet ghax kienet tiswa hafna flus biex taghmel ir-ricerki necessarji fuq il-kumpanniji biex jigi stabbilit x’propjeta hemm registrata fuq tali kumpanniji.

Jirrizulta ghalhekk car illi l-uzu intenzjonali tal-kelma ‘*hidden*’ ossija ‘mohbija’ kienet wahda intiza unikament sabiex taghmel hsara lir-rikorrent, peress illi ma kien minnu xejn illi l-propjeta kienet mohbija, izda, peress illi l-intimata, fl-istharrig taghha, ma riedetx tonfoq il-flus taghmel ir-ricerki necessarji, kien aktar konvenjenti ghaliha illi tallega illi l-propjeta kienet mohbija milli tonfoq il-flus u taghmel ir-ricerki mehtiega.

Jirrizulta car illi l-intenzjoni tar-rikorrenti kienet wahda unikament sabiex taghmel hsara lir-rikorrent u, di fatti, sussegwentement, ftit aktar ‘l isfel, l-intimata tghid:

Up to 2012, millions of euros in assets were held by the companies, which declared a minimal profit, some even at a loss.

Jirrizulta car illi l-intimata, intenzjonalment, kienet qieghda tallega illi r-rikorrent kellu assi fil-valur ta’ miljuni ta’ euros illi kienu mohbija u li tagghom huwa ma kien qieghed ihallas xejn.

Jirrizulta, madanakollu, illi l-intimata naqqset illi tindika fatt importanti, liema nuqqas juri l-intenzjoni illi kellha l-intimata hija u tikteb l-artikolu odjern.

Jirrizulta, di fatti, illi l-intimata naqqset milli tindika illi fil-kumpannija Pada Builders Limited, illi kienet l-unika kumpannija illi semmiet fl-artikolu meritu tal-kawza odjerna, kien hemm madwar sitt mitt elf aktar djun milli assi, tant illi l-Awdituri qalu s-segwent:

“At 31 August 2012, the company’s total liabilities exceeded its total assets by €594,891. In accordance with GAPSE there may be a material uncertainty that may cast significant doubt upon the company’s ability to continue as a going concern and therefore, the company may be unable to realise its assets and discharge its liabilities in the normal course of business.”

Tali dikjarazzjoni hija cara u tindika illi, a differenza ta’ dak allegat mill-intimata fl-artikolu taghha, mhux talli l-kumpanniji tar-rikorrent ma kellhomx “*millions of euors in assets*”, izda talli kellhom aktar djun milli assi u s-sitwazzjoni tal-kumpanniji kienet wahda prekarja.

Jirrizulta, ghalhekk, illi kuntrarjament ghal dak dikjarat mill-intimata, l-kumpanniji tar-rikorrent djun kellhom mhux assi.

Ikkunsidrat

Il-Qorti tirrileva illi, kif qal il-**Gatley on Libel and Slander** dwar id-difiza ta' 'fair comment', :

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. (sottolinjar tal-Qorti)

Lokalment, il-Qrati taghna dejjem hadu linja cara dwar id-difiza ta' kumment gust, liema difiza hija carament rrapurtata fis-sentenza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, fejn intqal is-segwenti:

dwar l-aspett tad-difiza tal-kumment gust ilu zmien jinghad mill-Qrati taghna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg 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 gustifikabbli 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'hażen jew bil-ħsieb preciz li jwegga' lil dak li jkun. (sottolinjar tal-Qorti)

Applikati tali principji għall-kaz odjern w il-kummenti illi dwaru hass ruhu aggravat ir-rikorrent fil-kawza odjerna, il-Qorti ma tistax ma tinnutax illi, a differenza ta' dak allegat mill-intimata:

- ma kienu qed isiru ebda xogholijet illegali fuq il-farmhouse allegatament propjeta tal-kumpannija Pada Builders Limited,
- il-farmhouse attwalment kienet ta' Jason Desira, u mhux tar-rikorrent, kif del resto ikkonferma pubblikament l-istess Jason Desira waqt konferenza stampa illi kien ghamel Ryan Callus u li giet rrapurtata fuq is-sit elettroniku www.timesofmalta.com fl-14 ta' Novembru 2014, fuq riprodotta
- ma kien hemm ebda assi "mohbija" fil-varji kumpanniji tar-rikorrent, peress illi l-assi huma kollha registrati u facilment rintraccjabli fir-Registru Pubbliku
- ma kienx hemm miljuni ta' Euro f'assi fil-kumpanniji tar-rikorrent, izda kien hemm aktar djun milli assi.

Huwa car illi fil-kaz odjern, l-intimata artikolista kellha kull intenzjoni illi thammeg ir-reputazzjoni tar-rikorrenti u tirrekalu dannu, tant illi fl-24 ta' Frar 2015 il-MEPA cahdet il-permess "to sanction alterations and extension of existing farmhouse" u kien akkordat biss wara illi r-rikorrent appella minn tali decizjoni, fejn, inter alia qal is-segwenti: (fol 125)

“Illi l-appellant jinsab ferm preokkupat, il-ghaliex huwa qed jikkontendi illi l-motivazzjoni wara c-cahda kienet biss spinta minnkonsiderazzjonijiet li m'għandhom x'jaqsmu xejn ma' ippjanar u li inholqu minhabba agenda politika ta'xi whus, inkluz mezzi tal-media;

Illi jidher car illi min ta' d-decizjoni ta' cahda, ikkundizzjoni rugu sfortunatement mill-persjoni tal-media;

Illi jekk dan huwa l-kaz, allura l-kwistjoni hija serja hafna, il-ghaliex huwa kundannabbli u deplorabbli illi persuna li jkollha applikazzjoni għall zvilupp, litkun korretta u addirittura rakkomandata ma tintlaqas it-talba tagħha bl-aktar mod ingust, minhabba konsiderazzjonijiet li jmorru lil hinn mill-istituzzjoni tal-MEPA u li jsiru biss biex jissodisfaw l-ghatx ta' min, il-hsibijiet tiegħu huma biss, li jagħmel hsara lill appellant, semplicement ghaliex martu hija persona involuta u attiva fil-politika”

Il-Qorti ma tistax ma tosservax illi għalkemm r-rikorrent huwa mizzewweg lill-persuna pubblika, ossija Ministru tal-Gvern, dana ma jfissirx illi huwa għandu jigi ttrattat bħala persuna politika u, għalhekk, kritikata u soggetta għal skrutinju fir-reqqa bħal persuna fil-politika – il-fatt li martu għazlet it-triq tal-politika ma għandhiex titqies bħala sentenza ta' kundanna għar-rikorrent fejn, minn dak inhar li saret politiku 'l quddiem, huwa ma jista jagħmel xejn fil-hajja tiegħu mingħajr ma jigi skrutinizzat fir-reqqa u espost fil-pubbliku.

Il-Qrati, filwaqt illi għandhom jiprotegu lill-gurnalisti meta jinvestigaw u johrogu għall-iskrutinju ta' kullhadd informazzjoni dwar agir ta' persuni pubbliki fil-politika, għandhom ukoll jiprotegu lill cittadini privati illi l-unika “htija” tagħhom tkun illi huma mizzegwin ma' persuna fil-politika.

Il-Qorti tinsisti illi tali persuni privati għandhom id-dritt illi jigu protetti minn indhil zejzed u allegazzjonijiet fiergha illi jsiru mill-gurnalisti u mezzi tax-xandir, liema attacchi ikunu intizi unikament sabiex jattakaw indirettament lill-konjugi tagħhom li jkunu fil-politika w il-Qrati għandhom id-dover illi jagħtuhom lill dawna l-persuni privati l-protezzjoni kollha illi jehtigilhom, u dana kemm sabiex jiprotegi tali persuni u, aktar u aktar, sabiex jigi assikurat illi l-pajjiz jibqa jkollu persuni illi jagħzlu illi jissagrifikaw il-hajja privata tagħhom u jidhlu fil-hajja pubblika mingħajr il-biza illi ser ikaxkru magħhom fl-arena qalila u kiefra tal-politika lill-konjugi w it-tfal tagħhom.

Il-familja ta' persuni fil-politika ma għandhom qatt jituzaw bħala arma mill-gurnalisti u mezzi ta' xandir kontra l-persuni illi johrogu għal politika.

Fl-ahhar nett, il-Qorti, abbazi tal-konsiderazzjonijiet fuq magħmulha, ma tistax ma tqiesx il-kontenut tal-artikolu meritu tal-kawza odjerna bħala libelluz u malafamanri fil-konfront tar-rikorrenti u kif 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 ttipprova tistahba wara dan id- dritt.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi prodotti quddiemha,

Wara illi rat is-sottomissjonijiet ta' l-abbli difensuri tal-partijiet,

Tghaddi biex taqta u tiddeciedi l-vertenza billi

Tichad l-eccezzjonijiet kollha ta' l-intimata,

Tilqa it-talbiet attrici, u ghalhekk, filwaqt illi

Tiddikjara il-kontenut tal-artikolu ippubblikat fuq is-sit www.timesofmalta.com redatt mill-intimata intitolat “**Minister shuns questions over husband’s property**” fit 28 ta’ Novembru 2014 bhala libelluz u malafamanti fil-konfront tar-rikorrent.

Tikkundanna lill-intimata thallas lir-rikorrent bhala danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta’ elfejn Euro (€2,000).

Spejjez u Imghax fuq is-sorte mid-data tas-sentenza sad-data tal-pagament effettiv a karigu ta’ l-intimata.

Magistrat Francesco Depasquale

Rita Sciberras
Deputat Registratur