



MALTA

# FIL-QORTI TAL-MAGISTRATI TA' MALTA

**Magistrat Francesco Depasquale**

LL.D. LL.M. (IMLI)

**Illum l-Hamis, 25 ta' Ottubru 2018**

Rikors Numru 100/2016

**Brian Tonna (ID 316764M) u Karl Cini (ID 136975M)**

vs

**Pierre Portelli, David Lindsay u Stephen Calleja bhala edituri tal-gazzetta 'The Malta Independent on Sunday' u 'The Malta Independent Online'**

Il-Qorti,

## 1. Premessi

1. Rat ir-rikors promotur ippresentat fl-10 ta' Mejju 2016 fejn ir-rikorrenti talbu sabiex l-intimati jigu kkundannati:

*prevja dikjarazzjoni illi intom, jew minnkom, responsabbli ta' malafama fil-konfront tal-atturi bl-artikli intitolati (a) "Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri" ippublikat fil-gurnal The Malta Independent on Sunday u (b) "Probe expected into alleged fraudulent documents vouching for Keith Schembri, Malcolm Scerri" (aktar tard emendat bhala "Updated: Keith Schembri, Malcolm Scerri deny fraudulent documents allegations"), it-tnejn li huma ppubblikati nhar it-8 ta' Mejju 2016 (Dok. BT1 u Dok. BT2 rispettivament), u maghduda wkoll il-kummenti li intom, jew min minnkom, ippublikajtu stante li l-allegazzjonijiet li hemm ippublikajtu fil-konfront tal-atturi huma malafamanti, libellużi u jirrapreżentaw fatti inveritieri u ghalhekk intizi sabiex ittellfu jew inaqqsu r-reputazzjoni tal-istess atturi, kif jirriżulta ahjar waqt it-trattazzjoni tal-kawża; thallsu lill-atturi dik is-somma li tiġi likwidata minn din l-Onorabli Qorti ai termini tal-artiklu 28 tal-Att dwar l-Istampa (Kap. 248 tal-Ligijiet ta' Malta).*

*Bl-ispejjeż, u bl-imghaxijiet legali sad-data tal-pagament effettiv kontra l-konvenut li huwa minn issa ngunt ghas-subizzjoni.*

2. Rat ir-risposta ta' l-intimati **Pierre Portelli, David Lindsay u Stephen Calleja** ippresentata fit-23 ta' Gunju 2016 fejn laqghu ghal dak mitlub billi qajjmu s-segwenti difizi:

*Illli t-talbiet tal-atturi huma infondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjeż kontrihom ghas-segwenti ragunijiet:-*

- 1. Li fuq bażi preliminari, jigi umilment eccepit li l-intimat Pierre Portelli ghandu jigi liberat mill-osservanza tal-gudizzju minn din l-Onorabbli Qorti stante li huwa ma kienx editur tal-artikoli in kwistjoni;*
- 2. Li minghajr preġudizzju ghas-suespost, subordinatament, ir-rikorrent ghandu jgib il-prova li l-intimati kienu lkoll edituri tal-artikoli in kwistjoni, fin-nuqqas ta' liema l-intimati jew min minnhom ghandhom jigu liberati mill-osservanza tal-gudizzju minn din l-Onorabbli Qorti;*
- 3. Li wkoll minghajr preġudizzju ghas-suespost, l-artikoli in kwistjoni mhumiex libellużi u/jew malafamanti fil-konfront tar-rikorrenti, iżda jikkonsistu biss f'fatti verifikabbli u/jew kummenti dwar kwistjonijiet fl-interess pubbliku li ghalhekk, huma fair comment, kritika accettabbli f'socjetà demokratika u eżercizzju tal-libertà tal-espressjoni sancita, inter alia, mill-Kostituzzjoni ta' Malta u l-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;*
- 4. Li wkoll minghajr preġudizzju ghas-suespost, ma jirriżultax li kien hemm kummenti li huma libellużi u/jew malafamanti fil-konfront tar-rikorrenti.*
- 5. Li wkoll minghajr preġudizzju ghas-suespost u subordinatament ghall-istess il-kontenut ta' dawn il-kummenti li minnhom ilmentaw ir-rikorrenti, jekk jirriżulta li huma malafamanti, ghandhom iwiegbu ghalihom il-persuni li ghaddewhom.*

## 2. Provi

1. Rat l-artiklu meritu tal-kawza odjerna ippubblikat fis-sebgha pagna ta' The Malta Independent on Sunday datat 8 ta' Mejju 2016 u intitolat **'Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri'**, liema artikolu kien jghid li gej:

*HSBC Bank Malta is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcolm Scerri, the general manager of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.*

*Journalist Daphne Caruana Galizia published an article on Friday highlighting the levels of secrecy both Mr Schembri and Mr Scerri applied in order to hide their companies in the British Virgin Islands, some two months after the March 2013 general election and Mr Schembri's appointment as the prime Minister's chief of staff.*

*Mrs Caruana Galizia also published two HSBC Malta “information report” documents with respect to Keith Schembri and Malcolm Scerri, which were apparently requested by BTI Management Ltd, a company owned by Nexia BT Holdings Ltd.*

*She alleged that the ‘information reports’ for Keith Schembri and Malcolm Scerri, who took Mr Schembri’s place as managing director of Kasco Ltd when Mr Schembri was appointed as the Prime Minister’s chief of staff, were “purportedly” issued by HSBC Bank Malta plc’s Attard branch. Both bank documents she published were dated 27 May 2013.*

*“I am informed by people who work at the bank that the Attard branch had closed more than a year earlier – in February 2012 – and was then already no more than an unmanned automated office,” Mrs Caruana Galizia reported.*

*If this turns out to be the case, action would very well be taken by the Malta Financial Services Authority which could, in turn, result in punitive action against the directors of BTI Management Ltd, who include Brian Tonna and Karl Cini. Both men are linked to Mr Schembri and are also heavily implicated in the Maltese spectrum of the Panama Papers scandal.*

*Some two months after the 2013 general election and being appointed as Chief of Staff, Keith Schembri and Kasco’s Malcolm Scerri created several new layers of secrecy for their companies in the British Virgin Islands.*

*This included ATC Administrators Inc taking 50,000 shares in both companies, as well as both Mr Schembri and Mr Scerri removing themselves as the sole shareholders and the sole directors of the companies, while appointing persons associated with Mossack Fonseca as directors. Nexia BT’s Brian Tonna and Karl Cini were also granted power of attorney over the companies by both of the new directors.*

*In addition, Mr Schembri and Mr Scerri had signed documents indemnifying Mossack Fonseca of all costs and expenses in relation to the company. Brian Tonna also wrote and sent letters of reference for both Schembri and Scerri to Mossack Fonseca.*

*The information reports cited were required to serve as further reference for Mossack Fonseca on Mr Schembri and Mr Scerri’s behalf.*

*Under the HSBC document’s ‘general comments,’ it is stated that Mr Schembri: “is known to us for a number of years as honest and trustworthy and unlikely to enter into commitments he would be unable to fulfil. Highly esteemed in his business circles. Considered to be a good business relationship.” The same was said of Mr Scerri in a separate document.*

2. Rat l-artikolu illi deher fuq il-Malta Independent Online dakinhar stess, intitolat originalment **“Probe expected into alleged fraudulent documents vouching for eith Schembri, Malcolm Scerri”**, sussegwentement mibdul biex jaqra **“Updated: Keith Schembri, Malcolm Scerri deny fraudulent documents allegations, liema artikolu kien jirriproduci verbatim l-artikolu fuq ikkwotat wara introduzzjoni illi kiene tgħid:**

*Keith Schembri and Malcolm Scerri are denying allegations of fraudulent presentation of documents, a statement by their lawyer said this evening.*

*This morning, The Malta Independent on Sunday reported that ....*

Tali artikolu imbgħad jispicca bis-segħenti kliem:

*... But, in a statement through their lawyer Andre Sciberras, Schembri and Scerri denied the allegation claiming that the article in question is "both factually incorrect and libellous in nature".*

*The lawyer gave the newspaper time until tomorrow at 12pm to retract the story pending legal procedures.*

*This newsroom intends to await an official declaration by HSBC before taking any further action.*

3. Rat l-affidavit ta' **Brian Tonna** (fol 35), ipprezentat fit 12 ta' Jannar 2017.
4. Rat l-affidavit ta' **Karl Cini** (fol 39), ipprezentat fit 12 ta' Jannar 2017, flimkien mad-dokumentazzjoni hemm annessa, inkluza korrisondenza bejn il-legali tar-rikorrenti u l-intimat Pierre Portelli dwar il-kontenut tal-artikolu.
5. Rat id-dikjarazzjoni illi saret mill-intimati fis 6 ta' Marzu 2017 fejn gie ammess illi l-intimat David Lindsay huwa l-editur tal-gurnal The Malta Independent on Sunday filwaqt illi Stephen Calleja huwa l-editur tal-online portal Malta Independent Online. (fol 57)
6. Rat illi fis 6 ta' Marzu 2017 ir-rikorrenti ddikjaraw illi ma kellhomx aktar provi x'jipprezentaw.
7. Semgħet l-kontro ezami ta' Brian Tonna illi saret fit 8 ta' Mejju 2017.
8. Semgħet l-kontro ezami ta' Karl Cini illi saret fit 8 ta' Mejju 2017.
9. Semgħet ix-xhieda in ezami u kontro ezami ta' **Franco Aloisio**, Head of Communications tal-HSBC Malta plc, prodott mill-intimati, illi saret fid 19 ta' Ottubru 2017, u rat id-dokumentazzjoni minnu esebita, ossija korrisondenza in konessjoni ma' verifiki illi saru wara il-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna.
10. Semgħet ix-xhieda in ezami u kontro ezami ta' **Victor Muscat**, dak iz-zmien Commercial Manager tal-HSBC Malta plc, prodott mill-intimati, illi saret fis 27 ta' Novembru 2017.
11. Rat illi fil 15 ta' Frar 2018, il-partijiet qablu illi x-xhieda migbura fil-kaz Rikors Nru 96/16 ' Keith Schembri et vs Pierre Portelli et' illi kienet qed tinstema kontestwalment mal-kawza odjerna, għandhom japplikaw għal kaz odjern ukoll.
12. Rat ix-xhieda migbura fil-kaz Rikors Nru 96/16 ' Keith Schembri et vs Pierre Portelli et', ossija s-segħenti:
  - l-affidavit ta' **Malcolm Scerri** pprezentat fit 28 ta' Settembru 2017; (fol 27)
  - x-xhieda ta' **Lawrence Pace**, Commercial Relationship Manager mal-HSBC Malta plc, mogħtija fid 9 ta' Novembru 2017 (fol 52)
  - x-xhieda ta' **Michel Cordina**, Head Commercial Banking tal-HSBC Malta plc, mogħtija fid 9 ta' Novembru 2017 (fol 74)

- l-affidavit ta' **Keith Schembri** ppreentat fil 15 ta' Frar 2018 (fol 93)

13. Rat illi fil 15 ta' Frar 2018 l-intimati ddikjaraw illi ma kellhomx aktar provi x'jippresentaw.
14. Rat illi fl-10 ta' Mejju 2018 il-kawza giet differita ghat-trattazzjoni finali.
15. Semgħet it-trattazzjoi tal-abbli difensuri tal-partijiet illi saret fit 18 ta' Gunju 2018, wara liema trattazzjoni l-kawza giet differita għas-sentenza.

### 3. Konstatazzjonijiet fattwali.

1. Jirrizulta, mill-provi presentati, illi l-intimat David Lindsay huwa l-editur ta' The Malta Independent on Sunday filwaqt illi Stephen Calleja huwa l-editur tal-Malta Independent Online'.
2. Jirrizulta illi fit-8 ta' Mejju 2016, fuq il-gurnal ta' nhar ta' Hadd, **The Malta Independent on Sunday**, u sussegwentement riprodotta verbatim fuq issit elettroniku ta' l-istess gazzetta, Malta Independent Online, ittellgħet storja illi kienet tagħmel referenza għal storja oħra illi kienet ittellgħet fuq is-sit elettroniku [www.daphnecaruanagalizia.com](http://www.daphnecaruanagalizia.com) il-Gimgha ta' qabel, ossija 6 ta' Mejju 2016.
3. Jirrizulta illi l-bazi ta' dina l-istorja mtella l-ewwel darba il-Gimgha 6 ta' Mejju 2016 fuq is-sit elettroniku [www.daphnecaruanagalizia.com](http://www.daphnecaruanagalizia.com) u eventwalment riprodotta fil-harga tal-Hadd tal-gurnal kienet l-pubblikazzjoni ta' hekk imsejjha "**Information Reports**" mahruġa mill-HSBC fis-27 ta' Mejju 2013 a favur ta' Keith Allen Schembri u Malcom Scerri rispettivament, liema 'Information Reports' kienu meħtieġa sabiex jikkonfermaw l-hekk imsejjah '*Character references*' ta' l-istess Keith Allen Schembri u Malcolm Scerri.
4. Jirrizulta, di fatti, illi għalkemm inhargu dawna l-ittri fis 27 ta' Mejju 2013, jidher illi fil-qiegħ ta' tali '*Information Reports*' kien hemm indikat illi dawna inhargu mill HSBC Bank Malta plc "*Attard Branch, 14, Mosta Road, Attard*", u dana minkejja il-fatt illi tali ferġha kienet attwalment magħluqa u kienet ilha hekk għal diversi xhur.
5. Jirrizulta illi tali zball wassal lill-gurnalista Daphne Caruana Galizia sabiex ittella artikolu fuq is-sit elettroniku tagħha hekk kif kienet qed tikteb dwar kumpanniji illi allegatament kienu qed jinfethu fil British Virgin Islands, liema artikolu eventwalment wassal lill-artikolist tal-artikolu meritu tal-kawza odjerna illi deher fis-sebgha pagna tal-gazzeta sabiex jiddikjara fil-bidu tal-artikolu li :

*HSBC Bank Malta is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcolm Scerri, the general manager of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.*

6. Jirrizulta, mix-xhieda tal-Head of Communications tal-HSBC Malta plc, Franco Aloisio, (fol 106-107) illi dakinhar illi giet ppubblikata l-istorja fuq il-blog ta' Daphne Caruana Galizia, ossija il-Gimgha 6 ta' Mejju 2016, Pierre Portelli kien għamel kuntatt minnufih ma' Franco Aloisio li, mill parti tiegħu, għarrfu illi, għalkemm ma setax jizvela u jitkellem dwar kwistjonijiet relatati ma' klijenti u klijentela tal-Bank, dwar l-awtenticita' tad-dokument illi kien qed jigu allegati bhala fraudolenti, '*prima facie*' kien jidher illi kien zball

amministrattiv izda l-Bank kien ser jaghmel l-istharrig necessarju malli jerggha jiftah ghax-xoghol, ossija t-Tnejn.

7. Jirrizulta, mix-xhieda tal-Head of Commercial Banking tal-HSBC Malta plc, Michel Cordina, illi l-Bank HSBC Malta plc, f'dak iz-zmien, kellha sistema illi kienet tipprovdi ghall hrug tal-hekk imsemjha 'Information Reports', illi jkunu mehtiega meta jkun hemm bzonn 'character references' ma' terzi, liema sistema kienet tohrog tali rapport fuq *template*, liema *template* setghet tinhareg minn kwalsiasi fergha tal-bank inniffsu u dana billi tintghazel u tiddahhal minn 'drop down list' illi kienet tipprovdi is-sistema komputerizzata tal-bank.
8. Jirrizulta illi l-ewwel fergha tal-bank illi kienet tidher f'tali template kienet dik ta' Attard, u s-sistema kienet disinjata b'mod illi awtomatikament, jekk wiehed ma jdahhalx fergha partikolari illi jrid jindika, tigi indikata illi tali rapport ikun inhareg mill-fergha tal-bank gewwa Attard, stante illi dina kienet l-ewwel fuq il-lista.
9. Jirrizulta, mix-xhieda ta' Lawrence Pace, illi kien il-Commercial Relations Manager responsabbli ghall-hrug ta' dawna z-zewgt 'Information Reports' meritu tal-kawza odjerna u illi kien ir-Relationship Manager tal-kontijiet bankarji ghas-socjetajiet ta' Keith Schembri, illi kkonferma illi kien sar zball da' parte tieghu, hekk imsejjah 'administrative error', fejn bi zvista kien naqas milli jindika l-fergha l-korretta, ossija tal-Head Office, minn fejn kienet qed jinhargu dawk l-'Information Reports', bir-rizultat illi awtomatikament telghet l-fergha tal-bank gewwa Attard bhala l-fergha minn fejn inhargu tali ittri.
10. Jirrizulta illi, fuq wara korrispondenza ghal spjegazzjoni tal-konsulent legali ta' Keith Schembri u Malcolm Scerri, rikorrent f'proceduri ohra, Michel Cordina, t-Tnejn 9 ta' Mejju 2016 kiteb lill-istess Scerri u kkonfermalu (Rik Nru 96/16 fol 45) s-segweni dwar l-'Information Reports', imsejjha "Report":

*The Bank confirms that the Report was legitimately issued on your request in terms of standing procedures.*

11. Jirrizulta wkoll illi l-Bank ghamel l-istharrig intern tieghu, kemm, skond Lawrence Pace, dakinhar illi hargat l-istorja fuq is-sit elettroniku [www.daphnecaruanagalizia.com](http://www.daphnecaruanagalizia.com), ossija l-Gimgha 6 ta' Mejju 2016, kif ukoll it-Tnejn 9 ta' Mejju 2016 fejn, f'korrispondenza interna indirizzata lis-superjur tieghu Victor Muscat u mibghuta fit 08.03am tad 9 ta' Mejju 2016, stqarr is-segweni: (fol 123)

*Regarding the bank address of the relative reports, at the time, the address of CMB here at Qormi was not automatic, but the first 'automatic' address was that of Attard. Hence the address. This was an oversight from my part that i did not check the bank address at the bottom of the report.*

12. Jirrizulta illi, fil-kaz ta' Keith Schembri u Malcolm Scerri, l-konsulent legali taghhom kiteb lill-intimati minnufih fid 19.15pm tat-8 ta' Mejju 2016 (Rik nru 96/16 fol 41) fejn talab "retraction of libellous article" u ppropona pubblikazzjoni ta' apologija.
13. Jirrizulta illi f'it hin wara, fit 20.14pm ta' dakinhar stess, l-intimat Pierre Portelli, illi kien jindika lillu niffsu bhala 'Director Business & Content' sahaq illi l-artikolu "never insituated that a probe has been launched and that the documents in question are fraudulent" filwaqt illi sahaq illi kien ser jaghmel 'update' tal-istorja biex tinkludi c-cahda tal-klijenti tieghu, Schembri u Scerri, u kien dispost jaghmel 'updates' ulterjuri biex

jikkjarifika l-ahbar f'kaz illi jinghata lilu tali dokumentazzjoni, jew mill-Bank jew mill-klijenti tieghu. (Rik Nru 96/16 – fol 42)

14. Jirrizulta illi Brian Tonna u Karl Cini, tramite il-konsulent legali taghhom, kitbu lill-intimati fl-10 ta' Mejju fejn gharrfuhom illi jekk dak mitlub ma kienx ser jigi irtitrat b'apologija sa dakinhar stess fl-14.00pm, huma kienu ser jiprocedu, ghal liema ittra l-intimat Pierre Portelli irrisponda billi qal li *“TMI never referred to the documents as fraudulent but reported the allegation of such considering the details provided on the stationery”* filwaqt illi sahaq illi c-cahda ta' Tonna u Cini kienet ser tigi rappurtata. Portelli sahaq ukoll illi *“In the meantime the paper cannot apologise as yet, not until the bank or your clients show us the original documents. A retraction of the article cannot be made due to the fact that this is now an exhibit in the libel cases filed against us by your clients.”*
15. Jirrizulta illi Keith Schembri u Malcolm Scerri intavolaw l-azzjoni taghhom fit-9 ta' Mejju 2010 filwaqt illi Brian Tonna u Karl Cini intavolaw l-azzjoni taghhom fl-10 ta' Mejju 2016.
16. Jirrizulta illi nelfrattemp, fuq is-sit elettroniku tal-gazzetta, ossija Malta Independent Online, persuni, kemm facilment identifikabbli kif ukoll anonimi, bdew jghaddu varji kummenti dwar tali storja fil-blog illi hija pprovdata mill-amministraturi ta' l-istess Malta Independent Online taht l-istess storja, fejn varji individwi bdew jghaddu kummenti u asserzjonijiet fil-konfront tar-rikorrenti Brian Tonna u Karl Cini, kif ukoll id-ditta taghhom Nexia BT, liema kummenti gew kollha ppubblikati fuq is-sit mill-amministratur ta' tali pagina.
17. Jirrizulta illi fost il-hafna kummenti u asserzjonijiet illi gew miktuba minn varji persuni u permessi mill-amministratur tas-sit Malta Independent Online, ir-rikorrenti identifikaw is-segwenti kummenti bhala lesivi fil-konfront taghhom:

***Jan Farrugia***

*But Nexia BT have not challeged Daphne's allegation of a fraudulent, faked document in the shap of an HSBC letterhead. It is Nexia BT which is in the dock here, not CashCow people. Nexia BT faked the document FOR them, so of course they are denying any fraud,, but Nexia BT are silent about the issue.*

...

***J Sammut***

*Keith Schembri and Malcolm Scerri, are not the persons who should be denying fraud but Karl Cini who signed the authenticity of the said documents on behalf of Nexia BT.*

***Joseph Lawrence***

*Maybe they should investigate Karl Cini?*

....

***Jan Farrugia***

*Forging a document is criminal. If this allegation is proven, the perpetrator's place is in prison while losing their professional status and warrant to practise it.*

***J Vella***

*Nexia BT, Brian Tonna and karl Cini should be stripped of their professional warrants and licences. All of them including Schembri should be investigated by the Police and MFSA.*

18. Jirrizulta illi, eventwalment, fil-11 ta' Mejju 2016, fuq is-sit Malta Independent Online (fol 46) u l-ghada, 12 ta' Mejju 2016, fuq il-gazzetta The Malta Malta Independent daily \*Rik Nru 96/16 – fol 48) ttellgħet storja intitolata “*HSBC 2013 documents on Keith Schembri and Malcolm Scerri authentic, not fraudulent*”, liema storja kienet tghid is-segwent: (fol 46)

*Following several attempts by The Malta Independent and other media outlets to establish whether HSBC 2013 documents found in the Panama Papers, pertaining to the Prime Minister's Chief of Staff Keith Schembri and his business associate Malcolm Scerri, are authentic or fraudulent, the bank has finally come out stating that these are authentic.*

*Citing and 'administrative error', HSBC took full responsibility of the matter, confirming that what Mr Schembri and Mr Scerri said on Sunday via their lawyer is true.*

*The Malta Independent on Sunday followed up a story originally published by journalist Daphne Caruana Galizia on her personal blog in which she noted that HSBC documents in her possession, that featured in the Panama Papers, showed that such documents were issued in 2013 under the bank's Attard Branch stationer when the branch had been closed in 2012.*

*This newsroom followed up the claims with sources within the bank that suggested that the bank couldn't ignore such an allegation and that it is normal that an internal inquiry would be under way.*

*Following a story in The Malta Independent on Sunday under the heading 'HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri' the bank would not reply to questions sent by this newsroom citing 'customer privacy' as its main reason.*

*However, HSBC today issued the following statement vouching for Mr Schembri and Mr Scerri: "HSBC Bank Malta notes the continued interest in whether correspondence from the bank's Attard branch was issued after the branch closed. The bank confirms that certain letters were issued containing the address of Attard branch after its closure due to an administrative error within the bank's correspondence system and templates. HSBC reiterates that it does not comment publicly on individual customer accounts and relationships."*

*In the meantime, Mr Schembri and Mr Scerri sued The Malta Independent for libel over its story that an investigation by HSBC was expected. By its statement HSBC confirmed The Malta Independent's story that an internal investigation was conducted, which ultimately led to the above statement.*

*HSBC issued a letter to Mr Schembri, which he circulated earlier today, confirming that the 2013 'Attard Branch' documents were authentic and not fraudulent.*

*This newsroom is now satisfied that in this matter no wrongdoing can be attributed to Mr Keith Schembri and Mr Malcolm Scerri, or their financial consultants Nexia BT. The newsroom acted in good faith and probed the issue until it was finally cleared by HSBC in its statement today.*



*In a statement issued after the HSBC declaration, Mr Schembri said this confirmed that there is "nothing untoward or suspicious in the bank reference the bank had issued to me in May 2013.*

*"It is now all too clear that the whole saga is nothing but one of a very long list of fabrications and lies, in my regard intended solely to harm my reputation and by extension that of the Government. I do not expect better from certain bloggers, but the complicity by certain respected media institutions is unacceptable and a bane to democratic standards and well being of this country."*

19. Jirrizulta illi l-artikoli kollha fuq ikkowitzati ghadhom accessibbli fuq is-sit elettroniku w uhd mill-kummenti illi saru minn varji persuni, inkluz dawk indikati bhala lesivi fil-konfront tar-rikorrenti, ghadhom jidhru filwaqt illi ohrajn gew imhassra mill-amministraturi waqt il-mori tal-kawza.

#### 4. Konsiderazzjoni legali

1. Jirrizulta illi l-azzjoni odjerna mibdija mir-rikorrenti, filwaqt illi tirrigwarda l-artikolu ppubblikat, tibaza ruhha aktar fuq il-kummenti illi certi persuni ghazlu illi jaghmlu fil-blog post illi kien hemm taht l-artikolu inniffsu.
2. Jirrizulta illi d-difiza ta' l-intimati huma principalment tlieta, ossija:
  - illi Pierre Portelli ghandu jigi liberat mill-osservanza tal-gudizzju ghax mhux l-EDITOR
  - illi l-artikoli kienu wiehed li kellu jitqies bhala fair comment
  - illi l-kummenti li saru ma kienux libelluzi u kellhom jirrispondu ghalihom min kitibhom
3. Jirrizulta illi jkun ghalhekk opportun illi l-Qorti, qabel ma taghmel il-onsiderazzjonijiet u konkluzjonijiet taghha, taghmel referenza ghal xi kaziztika lokali u estera kif ukoll tghalim fil-kamp tal libelli illi jistghu jkunu ta' assistenza u konfort ghal dina l-Qorti.
4. Jirrizulta illi, dwar id-difiza ta' *fair comment*, **Gatley on Libel and Slander** jghid is-segwenti,:

*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.*

5. Jirrizulta illi huwa fatt maghruf li d-“difiza” tal-“fair comment” dejjem kienet intiza sabiex tohloq bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u dritt li hu daqstant importanti, ossija dak li individwu jipprotegi r-reputazzjoni tajba tieghu.
6. Di fatti, kif inghad minn 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.*

7. Fil-kawza **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal illi:

*dwar l-aspett tad-difiza tal-kumment ġust ilu żmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment ġust tkun tgħodd, jeħtieġ li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (ċ) il-kumment irid jintwera li jkun ġustifikabbli jew 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 jweġġa' lil dak li jkun.*

Tali tagħlim 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 għamel is-segwenti 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.*

8. Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja għad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRH 567, para 43, tgħid is-segwenti:

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

9. Jirrizulta car, għalhekk, mill-provi fuq imressqa, illi hemm sabiex id-difiza ta' 'fair comment' u 'value judgment' tirnexxi, irid jigi ppruvat illi dak allegat huwa bbażat fuq fatti sostanzjalment veri.
10. Jirrizulta illi l-intimati jikkontendu ukoll illi huma ma humiex responsabbli għall-kitba ta' terzi.
11. Jirrizulta illi f'decizjoni mogħtija mill-Grand Chamber tal-Qorti Ewropea għad-Drittijiet tal-Bniedem fl-ismijiet **Delfi AS vs Estonia** fis 16 ta' Gunju 2015 dik il-Qorti ikkunsidrat difiza

simili impressqa mis-socjeta Delfi, li tiggstixxi sit ta' internet fejn jidhru stejjer u jsiru l-kummenti dwarhom, u fejn din il-Qorti qalet is-segwent:

*The Court notes at the outset that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression. That is undisputed and has been recognised by the Court on previous occasions (see Ahmet Yildirim v. Turkey, no. 3111/10, § 48, ECHR 2012, and Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom, nos. 3002/03 and 23676/03, § 27, ECHR 2009). However, alongside these benefits, certain dangers may also arise. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online.*

12. Tkompli tghid l-istess Qorti:

*... because of the nature of Internet media, it cannot reasonably be required of a portal operator to edit comments before publishing them in the same manner as applies for a printed media publication. While the publisher [of a printed media publication] is, through editing, the initiator of the publication of a comment, on the Internet portal the initiator of publication is the writer of the comment, who makes it accessible to the general public through the portal.*

13. Ghalhekk, il-Qorti tikkontendi illi

*.... 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.*

14. Madanakollu, il-Qorti tasal ghall-konkluzjoni illi

*The Court accordingly finds that, as a professional publisher, the applicant company should have been familiar with the legislation and case-law, and could also have sought legal advice .... the Court considers that the applicant company was in a position to assess the risks related to its activities and that it must have been able to foresee, to a reasonable degree, the consequences which these could entail.*

15. L-istess Qorti tghaddi biex taghmel is-segwent 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 (see Jersild v. Denmark, 23 September 1994, § 31, Series A no. 298; De Haes and Gijssels v. Belgium, 24 February 1997, § 37, Reports 1997I; and Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, § 58, ECHR 1999III). Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see Prager and Oberschlick v. Austria, 26 April 1995, § 38, Series A no. 313, and Bladet Tromsø*

*and Stensaas, cited above, § 59). The limits of permissible criticism are narrower in relation to a private citizen than in relation to politicians or governments (see, for example, Castells v. Spain, 23 April 1992, § 46, Series A no. 236; Incal v. Turkey, 9 June 1998, § 54, Reports 1998IV; and Tammer v. Estonia, no. 41205/98, § 62, ECHR 2001I).*

*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 (see Ahmet Yildirim, cited above, § 48, and Times Newspapers Ltd, cited above, § 27). 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 (see Editorial Board of Pravoye Delo and Shtekel, cited above, § 63).*

*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 (see Purcell and Others v. Ireland, no. 15404/89, Commission decision of 16 April 1991, Decisions and Reports 70, p. 262). The methods of objective and balanced reporting may vary considerably, depending among other things on the media in question (see Jersild, cited above, § 31).*

16. Eventwalment, dwar id-difiza mressqa minn Delphi illi hija ma hijex responsabbli għall-kummenti ta' terzi, bhalma del resto tghid l-intimata, il-Grand Chamber taghmel is-segwent i konkluzjoni:

*Based on the concrete assessment of the above aspects, taking into account the reasoning of the Supreme Court in the present case, in particular the extreme nature of the comments in question, the fact that the comments were posted in reaction to an article published by the applicant company on its professionally managed news portal run on a commercial basis, the insufficiency of the measures taken by the applicant company to remove without delay after publication comments amounting to hate speech and speech inciting violence and to ensure a realistic prospect of the authors of such comments being held liable, and the moderate sanction imposed on the applicant company, the Court finds that the domestic courts' imposition of liability on the applicant company was based on relevant and sufficient grounds, having regard to the margin of appreciation afforded to the respondent State. Therefore, the measure did not constitute a disproportionate restriction on the applicant company's right to freedom of expression.*

17. Jirrizulta car illi s-sentenza fuq citata hija cara bizzejjed biex jigi dikjarat illi, ghalkemm amministratur ta' sit elettroniku ghandu responsabbiltajiet f'it differenti minn dik ta' editor ta' gazzetta stampata, stante illi editur ta' gazzetta stampata jista jara l-kummenti qabel ma jigu ppublikati filwaqt illi amministratur ta' sit elettroniku jista jara il-kummenti biss la darba jidhru fuq is-sit tieghu, l-obbligi w responsabbiltajiet ta' l-amministratur isiru bhal dawn ta' editur ta' gazzetta stampata la darba il-kumment ikun stampat u jkun accessibbli għall-kummenti ta' terzi. Di fatti, f'tali stadju, f'kaz illi jitqieghed xi kumment illi, b'xi mod, jista jitqies bhala offensiv jew malafamanti fil-konfront ta' terzi, l-amministratur ghandu

jiehu l-passi kollha mehtiega sabiex inehhi tali kummenti minn fuq tali sit, sabiex il-hsara tigi minimizzata. F’kaz illi tali azzjoni ma sseh, ir-responsabbilta’ ta’ l-amministratur tiehu xejra differenti u l-amministratur ikun qieghed jqis il-kummenti ta’ terzi bhala kummenti tieghu u ghalhekk ghandu jitqies responsabli ghal tali kummenti daqslikieku ghamilhom hu.

18. Jirrizulta illi lokalment, f’kwistjoni simili hafna ghal dik meritu tal-kawza odjerna, ossija il-kawza **Nutar Mark Sammut vs Daphne Caruana Galizia**, deciza mill-Qorti tal-Appell (Sede Inferjuri) fid 9 ta’ Jannar 2008, dik il-Qorti, wara illi qieset il-gurisprudenza Ewropeja, fosthom dik fuq imsemmija, taghmel is-segweni osservazzjonijiet dwar il-liberta’ ta’ l-espressjoni u l-limitazzjonijiet taghha:

*Sa fejn hu maghruf ma jezisti ebda provvedimenti 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.*

19. 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.”*

## 5. Konsiderazzjonijiet konklussivi fuq il-fatti

1. Jirrizulta, mill-provi prodotti, illi l-artikolist fil-gurnal **The Malta Independent**, li ghazel illi ma jidentifikax ruhu fl-artikolu illi gie ppubblikat fil-harga tal-Hadd 8 ta’ Mejju 2016, ghazel illi jaghmel tieghu storja illi kienet dehret fuq il-blog tal-gurnalista Daphne Caruana Galizia f’it jem qabel, li kopja taghha qatt ma giet ppresentata fl-atti ta’ dina l-kawza, u filwaqt illi ghazel tieghu assersjonijiet gia maghmulha fuq tali blog, u dan meta ntqal illi intuzaw “*alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri*”, sahaq illi l-bank HSBC “*is expected to launch an investigation into the possible fraudulent presentation of documents concerning OPM Chief of Staff Keith Schembri and Malcolm Scerri, the general managed of the company Mr Schembri owns, Kasco Ltd, sources have told this newsroom.*”
2. Jirrizulta, mill-provi prodotti, illi ghalkemm l-artikolist ma identifika ruhu fl-artikolu per se, Pierre Portelli kien il-persuna illi attwalment ghazel kuntatt mal-Head of Communication tal-HSBC, ossija Franco Aloisio, dakinhar stess illi harget l-istorja fuq is-sit [www.daphnecaruanagalizia.com](http://www.daphnecaruanagalizia.com), sabiex jinvestiga l-allegazzjonijiet ulterjorment u kien hu attwalment il-persuna illi kienet giet mghoddija l-informazzjoni illi kien ser isir stharrig intern fl-HSBC dwar l-allegazzjonijiet illi saru – dana huwa dak illi eventwalment gie rrapportat fl-ewwel paragrafu tal-artikolu meritu tal-kawza odjerna – ghalhekk Pierre Portelli ghandu jerfa responsabbilta’ wkoll.

3. Jirrizulta wkoll, mix-xhieda ta' Franco Aloisio, illi l-istess Pierre Portelli gie mgharraf ukoll illi *'prima facie'* kien jidher illi dana kien zball amministrattivu allura ma kien hemm xejn fraudolenti f' dawk ir-rapporti – dana konvenjentement ma ssemmiex mill-artikolist fl-artiklu meritu tal-kawza odjerna.
4. Jirrizulta wkoll illi ghalkemm l-intimati kienu a korrent tal-fatt illi *'prima facie'* l-hrug tal-ittra bl-indirizz ta' Attard kien zball amministrattiv tal-Bank, Pierre Portelli, meta kkuntattjat mill-konsulent legali ta' Brian Tonna u Karl Cini, fl-10 ta' Mejju 2018 (fol 44) kif ukoll meta kkuntattjat precedentement mill-konsulent legali ta' Keith Schembri u Malcolm Scerri fit 8 ta' Mejju 2016 fil-ghaxija, irrisponda illi ma saru ebda allegazzjonijiet fil-konfront tar-rikorrenti u sahaq illi la darba r-rikorrenti ma kienux cahdu l-istorja illi dehert fuq is-sit elettroniku [www.daphnecaruanagalizia.com](http://www.daphnecaruanagalizia.com), l-istejjer ma setghux jitnehnew izda gharraf li malli l-Bank jghaddilhom informazzjoni, huma jiehdu hsieb jirrapportawha.
5. Jirrizulta illi fir-risposta lill-konsulent legali ta' Tonna u Cini, Portelli jghid *"You (sic) version of the facts that such could be the result of wrong stationery on behalf of the bank is indeed revealing. This will surely feature in our story highlighting your clients' denial"* (fol 44)
6. Jirrizulta illi tali indikazzjoni illi huwa ma kienx jaf dwar zball fil-hrug tal-*'letter head'* tal-Bank ma tihdirx ili hija korrobrata minn dak illi xehed r-rappresentant tal-Bank, fejn dana qal illi il-Gimgha 6 ta' Mejju 2016, kkuntattjat minn Pierre Portelli, huwa kien gharrfu illi *'prima facie'* kien hemm zball amministrattiv.
7. Jirrizulta illi Pierre Portelli ghazel illi qatt ma jixhed fil-proceduri odjerni, u ghalhekk il-Qorti ikollha tistrieħ fuq il-verzjonijiet tal-fatti kif stabbiliti fix-xhieda ta' Franco Aloisio fejn sahaq illi huwa kien gharraf lill Pierre Portelli minnufih lli dana probabbilment kien *'zball amministrattiv'*.
8. Jirrizulta illi dana il-fatt, illi certament kien ta' interess pubbliku u kien ta' interess kbir lill-qarrejja tal-gurnal u tas-sit elettroniku, konvenjentement gie skartat u mhux imdahhal fl-artikolu meritu tal-kawza odjerna, u ssemma biss l-ewwel darba fl-artikolu illi deher fil 11 ta' Mejju 2016, u dana wara illi r-rikorrenti kienu talbu apologija w Pierre Portelli kien irrifjuta illi johrogha.

## 6. Konsiderazzjonijiet konklussivi fuq id-danni u responsabbilta'

1. Jirrizulta illi tul il-proceduri odjerni, ir-rikorrenti, permezz tal-affidavits tagghom, saħqu l-istess haga, ossija s-segwenti:

*... l-agir irresponsabbli tal-intimati kien gida kkawzalna hsara kbira. Il-gideb fil-konfront taghna, flimkien mal-ispekulazzjonijiet tal-intimati u tal-qarrejja tagghom kienu diga saru. Id-dikjarazzjonijiet malafamanti u foloz fil-konfront taghna, inkluzi l-kummenti tal-qarrejja, ghadhom online u accessibbli ghal kullhadd sal-gurnata ta' llum.*

2. Jirrizulta wkoll illi, a differenza ta' dak illi jikkontendu l-intimati, partikolarment fil-korrispondenza illi skambjaw mar-rikorrenti qabel ma nb dew il-proceduri odjerni, il-fatt illi l-intimati ghazlu illi jippubblikaw, kwazi *'in toto'*, l-kontenut tal-artikolu li kien ittella fuq

is-sit tal-gurnalista Daphne Caruana Galizia ftit jiem qabel fisser illi kienu qed jaghmlu bhala tagghom dak minnha allegat.

3. L-intimati setghu facilment jirristringu l-artikolu tagghom ghall-ewwel paragrafu ta' l-istorja innifisha, li attwalment kienet l-unika "*investigazzjoni*" illi ghamel l-artikolist qabel ma rriproduca l-istorja illi kienet gia pubblikata ftit jiem qabel – dana ma ghamluhx.
4. Jirrizulta illi minflok, l-artikolist ghazel illi jenfasizza, kemm fit-titolu tal-artikolu kif ukoll fl-ewwel paragrafu tal-artikolu innifissu, illi kienet ser issir "*investigation*" da parte tal-bank HSBC fuq dak illi l-artikolist ddeskriva bhala "*alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri*".
5. Jirrizulta car illi l-intenzjoni tal-artikolist meta ppubblika tali storja ma kienetx sabiex jgharraf lill-qarrejja bi storja li jista jkollha interess pubbliku, izda attwalment kienet sabiex tirriaferma l-allegazzjonijiet gia maghmulha illi Keith Schembri u Malcom Scerri uzaw dokumentazzjoni falsifikati sabiex jifthu kumpanniji barra minn Malta, u implikaw lir-rikorrenti Brian Tonna u Karl Cini, kif ukoll il-kumpannija tagghom Nexia BT – dana johrog car mill-fatt illi, kif jistqarr Franco Aloisio, Pierre Portelli kien mgharraf illi kien jidher li dan kollu kien kaz ta' 'zball amministrattiv', izda tali dettall gie totalment ommess mill-artikolist fl-artikolu meritu tal-kawza odjerna u ssemma biss tlett ijiem wara, meta l-hsara li r-rikorrenti jilmentaw dwaru kienet gia saret.
6. Jirrizulta wkoll illi, ghalkemm l-artikolu per se ma jaghmilx referenza ghar-rikorrenti b'isimhom, l-intenzjoni sabiex taghmel allegazzjonijiet illijolqtu ukoll lir-rikorrenti hija ben ippruvata mill-kummenti illi thallew jaghmlu terzi persuni taht l-artikolu illi deher online, liema kummenti juru bic-car illi l-messagg illi inghata lill-pubbliku kien li r-rikorrenti w il-kumpannija tagghom Nexia BT kienu involti f'attivitá illegali u kriminali ta' falsifikazzjoni ta' dokumentazzjoni tal-bank, u dana sabiex jottjenu vantagg huma, ossija jifthu kumpanniji barra minn Malta – l-intimati kienu f'kull posizzjoni illi jipprodibixxu jew jillimitaw il-kummenti illi saru minn terzi dwar dak allegat minnhom fl-artikolu, imma huma ghazlu illi jhallu lill-kullhadd jghaddi l-kummenti tagghom, inkluz kummenti illi ma jistghux ma jiqtiesux bhala minnhom innifishom libelluzi jew malafamanti fil-konfront tar-rikorrenti peress illi jattribwixxu azzjoni kriminali da' parte tar-rikorrenti, liema kummenti minnhom infushom jippruwaw il-hsara illi kkawzaw l-intimati bil-pubblikazzjoni tal-artikolu meritu tal-kawza odjerna minghand ma ghaddew l-informazzjoni **kollha** illi huma kellhom fil-pussess tagghom.
7. Jirrizulta, minn guriprudenza tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, illi ghalkemm l-intimati jishqu illi min ghamel il-kummenti ghandu jinzamm responsabbli ta' dak illi ntqal, huwa car li l-fatt li l-amministratur tas-sit the Malta Independent Online ippermetta illi jsiru kummenti u allegazzjonijiet fil-konfront tar-rikorrenti hija sufficjenti sabiex jinzammu responsabbli tagghom ukoll.
8. Il-Qorti thoss illi r-responsabbilta' ta' l-intimati, fil-kaz odjern ma huwiex dovut minhabba il-kontenut tal-artikolu per se', fejn ma jsirux allegazzjonijiet daqstant malafamanti fil-konfront tar-rikorrenti, izda huwa rizultat tal-fatt illi hallew u ppermettew lill-persuni, uhud sahansitra mhux facilment identifikabbli, jaghmlu kummenti libelluzi u malafamanti fil-konfront tar-rikorrenti minghajr ma dawna gew b'xi mod kkontrollati jew censurati qabel il-pubblikazzjoni, liema kummenti, mill-qari tagghom, kienu intizi unikament biex jaghmlu hsara lir-rikorrenti.

9. Il-Qorti tosserva illi kien ikun ferm ahjar kieku l-intimati, flok ma qajjmu difiza illi ma kienux responsabbli għall-kummenti ta' terzi, hadu hsieb illi jidentifikaw lill min kiteb il-kummenti li tqiesu bhala libelluzi u malafamanti mir-rikorrenti u talbu illi tali persuni jigu kjamati in kawza biex jirrispondu għal eghmilhom, u dana peress illi kien ikun hekk biss illi, b' mod limitat, jillimitaw r-responsabbiltajiet tagħhom u jghadduom fuq min attwalment għazel illi jagħmel il-kummenti tiegħu, mill-kumdi ta' tad-dar tiegħu, wara il-parawentu tas-sistema informatika illi biddlet ir-realta tad-dinja kollha kif konna nafuha.
10. Il-Qorti tosserva illi wasal iz-zmien illi kull min jghaddi kwalsiasi tip ta' kumment dispreggjattiv fuq il-mezzi socjali ikun facilment rintraccjabbli u, kif jghidu l-Ingliżi, "*put to task*" għal dak illi jkun għazel illi jikteb u jxandar ma' kullhadd u jinzammew responsabbli għal-hsara kbira illi tkun qieghda ssir lill min ikun qed isofri minn l-effetti tal-allegazzjonijiet fil-konfront ta' tali persuni f'kaz illi jigi ppruvat illi huma inveritjeri.
11. Il-Qorti ma tistax ma tesprimix it-thassib serju tagħha dwar l-uzu hazin u malizzjuż tal-kummenti illi bdew jigu riprodotti wara l-artikoli illi jigu ppubblikati fuq il-gazzetti online, bħalma gara fil-kaz odjern, u dana peress illi tali uzu hazin u malizzjuż qieghed jimmina l-kuncett baziku tal-liberta' tal-espressjoni, stante illi, filwaqt li kullhadd għandu jkollu l-liberta' illi jesprimi l-hsibijiet tiegħu, hadd ma għandu d-dritt illi jiggudika persuni u jallega fatti li jigu eventwalment ippruvati bhala inveritjeri mingħajr ma eventwalment jigi punit f'kaz illi tali allegazzjonijiet huma foloz.
12. Il-Qorti tosserva ukoll illi għalkemm l-intimati jikkontendu illi huma ma għandhomx jinzammew responsabbli tal-kummenti illi saru minn terzi, tali responsabbilta tibqa tinkombi fuqhom sakemm jibqu jippermettu illi jsiru kummenti libelluzi u malafamanti fil-konfront ta' terzi minn fuq is-sit tagħhom, li l-intimati għazlu illi jagħmlu accessibbli għal kulhadd bhala mezz ta' xandir tal-hsibijiet ta' kull min għandu interess, b'impunita' u sakemm l-intimati jibqu joffru tali pjattaforma lill dawna l-persuni illi persistement jagħmlu akkuzi mingħajr ma jerfghu responsabbilta' għalihom u jibqu jippermettulhom jikkumentaw b'impunita, l-intimati ser jibqu responsabbli għal dak illi jsir fuq is-sit tagħhom. Del resto, kif qalet il-Qorti tal-Appell (Sede Inferjuri) fis-sentenza '**Sylvana Debono vs Alexander Farrugia**', deciza fis-27 ta' Jannar, 2016 u li dina l-Qorti ssib konfort fiha u tagħmilha bhala tagħha.

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

## 7. Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotta quddiemha, u wara illi semgħet it-trattazzjoni ta' l-abbli difensuri taz-zewgt partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

**Tichad** l-eccezzjonijiet kollha ta' l-intimati,

**Tilqa** it-talbiet attrici, u għalhekk, filwaqt illi

**Tiddikjara** illi l-artikli intitolati (a) "**Panama Papers: HSBC investigation expected into alleged fraudulent documents vouching for Keith Schembri and Malcolm Scerri**" ippubblikat fil-gurnal



The Malta Independent on Sunday u (b) "**Probe expected into alleged fraudulent documents vouching for Keith Schembri, Malcolm Scerri**" (aktar tard emendat bhala "**Updated: Keith Schembri, Malcolm Scerri deny fraudulent documents allegations**"), it-tnejn li huma ppubblikati nhar it-8 ta' Mejju 2016 fuq is-sit The Malta Independent Online, u maghduda wkoll il-kummenti illi dehru taht l-artikoli online, kien libelluzi u malafamanti fil-konfront tar-rikorrenti Brian Tonna u Karl Cini.

**Tikkundanna** lill-intimati in solidum bejniethom ihallsu lir-rikorrenti Brian Tonna u Karl Cini bhala danni is-somma ta' tlett elef Euro (€3,000).

**Spejjez** kollha tal-proceduri odjerni u **Imghax** sad-data tal-pagament effettiv ikun a kariku ta' l-intimati.

**Magistrat Francesco Depasquale**

**Rita Sciberras**  
Deputat Registratur