

Qorti tal-Appell
(Kompetenza Inferjuri)

Appell numru: 46/2017

Dr Jeffrey Pullicino Orlando (appellat)

Vs

Kummissarju ghall-Infommazzjoni u l-Protezzjoni tad-Data (appellant)

30 ta' April, 2019.

1. L-intimat appella minn decizjoni tat-Tribunal tal-Appelli dwar l-Infommazzjoni u l-Protezzjoni tad-Data tal-14 ta' Settembru, 2017 li biha hassar decizjoni tal-intimat tat-18 ta' Novembru, 2016 u ddikjara li hames ritratti (JPO1, JPO2, JPO3, JPO5 u JPO6) kisru d-disposizzjonijiet tal-Kap. 440 tal-Ligijiet ta' Malta dwar l-iprocessar tad-data u baghat l-atti lura lill-intimat sabiex *".... jerga' jikkunsidra mill-gdid id-decizjoni tieghu u jasal ghad-decizjoni skont ir-rizultanzi ta' dan it-Tribunal kif jitlob l-artikolu 49(4) tal-Kap. 440 tal-Ligijiet ta' Malta"*.
2. Il-kaz jitratta dwar il-pubblikazzjoni ta' artikli b'ritratti fil-blog, *"Running Commentary Daphne Caruana Galizia's Notebook"* matul is-snin 2012, 2014 u 2016.
3. Tajjeb li jinghata *background* qasir tal-artikli oggett ta' dawn il-proceduri:
 - i. 13 ta' Marzu, 2010 bit-titlu *"Consuelo and Robert are now at Tarragon at St Paul's Bay"*, kien fih l-ahbar li f'dak il-hin ir-rikorrent kien qiegħed jiekol f'restaurant ma' ohrajn.
 - ii. 11 ta' Lulju, 2012 bit-titlu *"Carmen and Jeffrey are striking another deal at the notary right now"* fejn gie rraportat li f'dak il-hin ir-rikorrent u certu Carmen Ciantar kienu qegħdin f'ufficcju ta' nutar, jixtru xi haga.
 - iii. 15 ta' Frar, 2014 bit-titlu *"NOW UPDATED WITH PHOTOGRAPH/Valentine's Day special: Jeffrey Pullicino Orlando's love plane"*. Fih ritratt ta' mara u ragel mexjin fl-ajruport ta' Malta, u tahtu stampat: *"Jeffrey Pullicino Orlando and his MCST personal assistant, Lara Boffa, checking in for the Air Malta flight to Catania yesterday, Valentine's Day"*. L-artiklu jagħti l-ahbar li r-rikorrent u Boffa siefru l-gurnata ta' qabel fuq titjira tal-Airmalta destinazzjoni Catania;
 - iv. 22 ta' Novembru, 2014 bit-tiltu *"Meanwhile, at tonight's song contest"*. Fl-artiklu kien publikat ritratt li fih jidher ir-rikorrent waqt li kien qiegħed go festival tal-kant ma' Boffa u ma' nies ohra.

- v. 27 ta' Novembru, 2014 bit-titlu "*Malta Council for Science and Technology chairman flies to London to celebrate his 51st birthday with his personal assistant*". L-artiklu jaghti l-ahbar li r-rikorrent u Lara Boffa telqu minn Malta filghodu kmieni destinazzjoni Heathrow sabiex jiccelebra l-eghluq ta' 51 sena. L-artiklu fih ritratt tar-rikorrent fuq l-ajruplan.
 - vi. 24 ta' Marzu, 2016 bit-titlu "*MCST executive chairman on Sicilian jaunt with Malta Enterprise consultant*". Gie stampat ukoll ritratt fejn ir-rikorrent jidher li qiegħed waqt laqgħa politika. Fl-artiklu intqal li r-rikorrent kien f'dak il-hin fi triqtu lejn Pozzallo u tela' bil-karrozza tax-xogħol, flimkien mal-partner tiegħu Lara Boffa.
4. Mill-provi li tressqu (ara affidavit tar-rikorrent, Lara Boffa, Karl Stagno Navarra) jirrizulta li l-attivitajiet li ssem mew fl-artikli kienu relatati mal-hajja privata tar-rikorrent u mhux attivita relatata mal-ufficcju pubbliku li kien jokkupa.
 5. Jirrizulta li fis-sena 2010 u 2012 ir-rikorrent kien membru tal-Kamra tad-Deputati, filwaqt li fl-2014 u 2016 kien jokkupa l-kariga ta' chairman tal-Malta Council for Science and Technology.
 6. L-intimat caħad it-talba tar-rikorrent u kkonkluda:

"Following the legal analysis of all facts and circumstances surrounding this complaint, the Commissioner judiciously decides that no violation of the complainant's data protection rights has been committed.

This decision has been reached after taking specific account of the facts that the complainant is a public person and the reported activities did not happen in a secluded place which is exclusively available to the data subject.

Furthermore, the blog posts do not reveal or expose any pieces of personal data which the general public could have never become aware of. In this case, the journalistic rights to impart the whereabouts of a public person do not prejudice his right to data protection as afforded under the Data Protection Act. Having said this, as affirmed by judgments delivered by the European Court of Human Rights this may, nevertheless, affect the data subject's right to privacy".

7. Ir-rikorrent appella mid-decizjoni tal-intimat, u t-Tribunal iddecieda:

"Għar-rigward Dok JP01, JP02, JP03, JP05 u JP06, dan it-Tribunal jqis li l-informazzjoni pubblikata mill-blogger fil-blog tagħha hija biss kurzita u xejn aktar u għalhekk ma għandhom ebda aspett ta' interess pubbliku dwar dak li għamel l-appellanti fil-hajja privata tiegħu mingħajr ma' dak li għamel impinga b'xi mod fuq ir-rwol pubbliku tiegħu. Kif irriteriet il-Qorti Ewropea fil-preliminary ruling fil-kaz Finnish Data Protection Ombudsman u Satakunnan Markkinasporssi oy and Atamedia OY 16.12.2008: thus activities may be classified as 'journalistic' if their sole object is disclosure to the public of information, opinions or ideas, irrespective of the medium used to transmit them (para 52-56, 59, 61) Zgur li 'activities in the course of private family life' tal-appellanti ma jaqghux taħt informazzjoni pubblika izda huma biss kurzitajiet u għalhekk ma humiex protetti la bil-Kap. 440 u lanqas bid-dritt tal-espressjoni u l-Ligi tal-Istampa".

8. Fir-rikors tal-appell l-intimat argumenta li informazzjoni dwar fejn kien jinsab ir-rikorrent *"ma tistax tigi kkunsidrata bhala data personali"*. Pero' l-qorti tosserva kif fid-decizjoni tat-18 ta' Novembru 2016, l-intimat qal:

"3. The information identifying the complainant constitutes personal data.

*The publication of the **name, surname and photographs** which clearly identify the complainant constitutes processing of personal data as defined under Article 2 of the Data Protection Act and, consequently, falls within the scope of the same law".*

9. Skont l-artikolu 2 tal-Att dwar il-Protezzjoni tad-Data (Kap. 440) li gie abrogat bl-Att , *"data personali' tfisser **kull informazzjoni li tirrigwarda persuna naturali identifikata jew identifikabbli.....**"*. Definizzjoni li hi ferm wiesa' u ghalhekk tinkludi wkoll taghrif dwar il-posizzjoni geografika ta' persuna f'hin partikolari. Hekk per ezempju fil-blog tas-27 ta' Novembru, 2014 li deher fit-3.00 ta' wara nofsinhar, gie rraportat li dakinhar stess ir-rikorrent kien siefer bl-ajru lejn Heathrow, Londra sabiex jiccelebra l-eghluq ta' 51 sena. L-istess fir-rigward tal-blog tat-13 ta' Marzu, 2010 publikata fil-10.40 ta' bil-lejl u li fih kien rraportat li f'dak il-hin ir-rikorrent kien qiegħed għall-pranzu fir-restaurant Tarragon, San Pawl il-Bahar. Taghrif dwar fejn kien qiegħed ir-rikorrent per ezempju fil-hin tal-*uploading* tal-artiklu fuq il-*blog*, fih innifsu hu data personali.

10. L-istess disposizzjoni tipprovdi definizzjoni ta' *'processar' u 'processar ta' data personali'*:

*"... kull thaddim jew sett ta' operazzjonijiet li jsiru dwar data personali, sew jekk dan jigri b'mezzi awtomatici sew jekk le, u tinkludi l-kollezzjoni, r-rekordjar, l-organizzazzjoni, **il-hzin**, l-adattament, il-bdil, l-ikruprar, **il-gbir**, l-uzu, **il-kxif permezz ta' trasmissjoni**, **it-tixrid** jew l-għemil xort'ohra ta' informazzjoni disponibbli, l-allinjament jew il-kombinazzjoni, l-imblokkar, il-kancellament jew il-qerda ta' tali data".*

11. Il-hzin, gbir, uzu u tixrid ta' personal data jikkwalifika bhala *'processar ta' data personali'*. Għaldaqstant, m'hemmx dubju li Caruana Galizia, meta gabret dik id-data dwar ir-rikorrent, poggietha fuq il-website tagħha, u xerdet dik l-informazzjoni wettqet *'processar ta' data personali'* dwar ir-rikorrent u persuni ohra. Dan ovvjament mingħajr il-kunsens tagħhom. Rilevanti hi s-sentenza **Lindquist case** (C-101/2001 tas-6 ta' Novembru, 2003) li rrefera għaliha t-Tribunal.

12. Il-qorti ma taqbilx mal-intimat li l-ilment originali tar-rikorrent kien limitat għar-rappurtagg fejn kien jinsab u daqshekk. L-ilment sar taht il-Kap. 440, u għalhekk hu evidenti li r-rikorrent ilmenta li bil-posts sar processar ta' data personali mingħajr il-kunsens tiegħu, u li kienu qegħdin iservu biss sabiex jagħtu fastidju lilu u terzi.

13. Fir-rikors tal-appell l-intimat qal li f'dan il-kaz ma kienx hemm processar ta' data personali (ara paragrafu 9 tar-rikors tal-appell). Pero' fid-decizjoni tat-18 ta' Novembru, 2016 ma qalx hekk. F'kull kaz il-qorti diga' għamlitha cara li sar

processar ta' data personali. Il-fatt li dik l-informazzjoni kienet dwar affarijiet li graw fil-pubbliku, ma jfissirx li ma tibqax data personali u li ma sarx processar ta' data personali.

14. Skont Artikolu 8 tal-EU Charter of Fundamental Rights:

*"1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.
Everyone has the right of access to data which has been collected concerning him or her and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority".*

15. Artiklu 6 tal-Kap. 440 kien jipprovdi li:

"... xejn f'dan l-Att ma ghandu jkun ta' pregudizzju ghall-applikazzjoni tad-disposizzjonijiet tal-Att dwar il-Konvenzjoni Ewropea, dwar il-liberta ta' l-espressjoni jew id-disposizzjonijiet ta' l-Att dwar l-Istampa, dwar il-libertajiet gurnalistici".

16. M'hemmx dubju li jezisti l-jedd ghall-liberta ta' espressjoni. Pero' jezisti wkoll il-jedd ghall-privatezza. Irid jinstab il-bilanc bejn iz-zewg drittijiet fundamentali. Ovvjament fejn per ezempju hemm dibattitu ta' interess pubbliku, ftit li xejn jista' jkun hemm skop ghal restrizzjoni fuq id-dritt li persuna xxerred l-informazzjoni ghaliex il-pubbliku ghandu dritt li jkun infurmat.

17. Fis-sentenza **Satakunnan Markkinaporssi Oy and Satamedia Oy v. Finland** tal-EctHR tas-27 ta' Gunju, 2017, il-Grand Chamber qalet:

"168. In ascertaining whether a publication disclosing elements of private life also concerned a question of public interest, the Court has taken into account the importance of the question for the public and the nature of the information disclosed (see Couderc and Hachette Filipacchi Associés, cited above, § 98; and Von Hannover no. 2, cited above, § 109).

*169. The public has a right to be informed, and this is an essential right in a democratic society which, in **certain special circumstances, can even extend to aspects of the private life of public figures. However, articles aimed solely at satisfying the curiosity of a particular readership regarding the details of a person's private life, however well-known that person might be, cannot be deemed to contribute to a debate of public interest** (see Von Hannover, cited above, § 65; MGN Limited v. the United Kingdom, no. 39401/04, § 143, 18 January 2011; and Alkaya v. Turkey, no. 42811/06, § 35, 9 October 2012).*

*170. In order to ascertain whether a publication concerning an individual's private life is not intended purely to satisfy the curiosity of a certain readership, but also relates to a subject of general importance, it is necessary to **assess the publication as a whole and have regard to the context in which it appears** (see Couderc and Hachette Filipacchi Associés, cited above, § 102; Tønsbergs Blad A.S. and Haukom v. Norway, no. 510/04, § 87, 1 March 2007; Björk Eiðsdóttir v. Iceland, no. 46443/09, § 67, 10 July 2012; and Erla Hlynsdóttir v. Iceland, no. 43380/10, § 64, 10 July 2012).*

*171. Public interest ordinarily relates **to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being***

of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about. The public interest cannot be reduced to the public's thirst for information about the private life of others, or to an audience's wish for sensationalism or even voyeurism (see Couderc and Hachette Filipacchi Associés, cited above, §§ 101 and 103, and the further references cited therein)".

18. Imbagħad fis-sentenza **Falzon v Malta** (numru 45791/13) tad-29 ta' Gunju 2018, l-istess qorti qalet:

*"57. As to Article 10, which guarantees freedom of expression to "everyone", it has been the Court's practice to recognise the essential role played by the press in a democratic society (see Magyar Helsinki Bizottság v. Hungary [GC], no. [18030/11](#), § 165, ECHR 2016). The Court has previously established that the press, as well as NGOs, exercise watchdog functions and that **the function of bloggers** and popular users of the social media **may be also assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned** (ibid., § 166 and 168).....*

58. A fundamental distinction needs to be made between reporting details of the private life of an individual and reporting facts capable of contributing to a debate in a democratic society – relating to politicians in the exercise of their official functions, for example (see Couderc and Hachette Filipacchi Associés, cited above, § 118)".

19. Il-qorti ma taqbilx mar-ragunament tal-intimat li għaliex dak li gie rapportat kien dwar dak li sar fil-pubbliku, allura t-talba tar-rikorrent kellha tigi michuda. Il-ligi ma kinitx tipprovdi eccezzjoni f'dak is-sens. Li hu zgur hu bl-artikli pubblikati fil-blog, it-tagħrif tqassam lil hafna iktar nies. Fis-sentenza **Tietosuojavaluutettu vs Satakunnan Markkinaporssi Oy, Statamedia Oy** tas-16 ta' Dicembru 2008, il-Grand Chamber tal-Qorti Ewropea tal-Gustizzja qalet li t-tqassim ta' tagħrif li jingabar minn dokumenti li qeghdin fil-'*public domain*' jikkwalifika wkoll bhala processar ta' data personali.

20. Il-qorti m'għandhiex dubju li l-ahbarijiet li nghataw fil-*blog posts* JP01 tal-15 ta' Frar 2014, JP02 tat-22 ta' Novembru 2014, JP03 tas-27 ta' Novembru 2014, JP05 tat-13 ta' Marzu 2010 u JP06 tal-11 ta' Lulju 2012 m'huma xejn ghajr *gossip* li jinteressaw biss lil min m'għandux x'jagħmel u għandu l-ghatx għall-ahbarijiet dwar il-hajja privata tan-nies. Il-qorti minghajr ezitazzjoni tiddikjara li m'hemmx interess pubbliku li l-qarrej ikollu access għal dak it-tip ta' tagħrif dwar ir-rikorrent.

Għal dawn il-motivi tichad l-appell bl-ispejjez kontra l-intimat.

Anthony Ellul.