MALTA

# QORTI CIVILI
# PRIM' AWLA
# (GURISDIZZJONI KOSTITUZZJONALI)

**ONOR. IMHALLEF**
**JOSEPH ZAMMIT MC KEON**

Seduta tat-23 ta' Mejju, 2011

Rikors Numru. 22/2011

**L-Avukat Dr. Deborah Schembri, Jeffrey Pullicino Orlando u Evarist Bartolo kemm f`isimhom personali kif ukoll bhala rapprezentanti tal-Moviment Iva Ghad-Divorzju / Iva Ghaz-Zwieg**

***kontra***

**L-Awtorita` tax-Xandir u b`digriet tad-19 ta` Mejju 2011 l-Av. Dr. Robert Tufigno bhala mandatarju specjali tal-assenti Reverendu Monsinjur Charles Vella kien awtorizzat jintervjeni fil-kawza *in statu et terminis***

**Il-Qorti :**

**Ikkunsidrat :**

## I. Preliminari

Rat ir-rikors prezentat fis-16 ta` Mejju 2011 li jaqra hekk–

*1. Illi bl-Avviz ippubblikat fil-gazzetta tal-gvern tat-30 ta` Marzu 2011 ippubblikat ghal fini ta` l-Artikolu 9(2) ta` l-Att dwar ir-Referendi, kapitolu 237 tal-Ligijiet ta` Malta, gie mhabbar illi fit-28 ta` Mejju 2011 ghandu jinzamm referendum konsultattiv dwar l-introduzzjoni ta` divorzju skond mistoqsija ppubblikata ukoll fl-imsemmi avviz ;*

*2. Illi sussegwenti ghal tali avviz l-Awtorita` tax-Xandir habbret skema ta` Xandiriet ghar-Referendum 2011 organizzata mill-istess Awtorita`, u anke stiednet lir-rikorrenti, fost ohrajn, sabiex ihejju spots li kellhom jigu nkluzi fl-iskema organizzata mill-Awtorita` tax-Xandir ;*

*3. Illi fost l-ispots li gew imhejjija mir-rikorrenti u li kellhom jintwerew fuq il-mezzi tax-xandir ta` l-Istat, kien hemm spots f`liema r-rikorrenti uzaw informazzjoni u opinjoni reza pubblika minn figura pubblika u wara li xxandar 'footage' ta` l-istess opinjoni giet mistoqsija jekk wiehed huwiex sejjer jivvota iva ghad-divorzju;*

*4. Illi din l-opinjoni giet espressa fil-pubbliku fuq stazzjoni tat-televizjoni waqt programm imxandar f`hin kkunsidrat bhala 'prime time' fejn il-Monsinjur Charles Vella li kien mistieden sabiex jaghti l-opinjoni tieghu fuq id-divorzju esprima tali opinjoni, li minn dak il-mument dahlet fil-kamp ta` informazzjoni pubblika ;*

*5. Illi l-istess Monsinjur Charles Vella kompla jippartecipa f`dibattitu pubbliku dwar id-divorzju u dan billi*

*wkoll kompla jesprimi l-istess opinjoni ghal dik espressa fuq it-televizjoni anke f`gazzetti u artikoli rezi pubblici ;*

*6. Illi sabiex il-'footage' li xxandar fuq it-televizjoni intuza mir-rikorrenti gie moghti l-kunsens kemm ta` l-istazzjon in kwistjoni, One Productions, kif ukoll tal-produttur tal-programm "Bla Agenda" f`liema xxandret din l-opinjoni ;*

*7. Illi l-Awtorita` tax-Xandir approvat tali spots u sahansitra dawn ixxandru darbtejn fil-gurnata tat-12 ta` Mejju 2011, izda wara li l-Awtorita` intimata rceviet ittra ta` ilment miktuba ghan-nom tal-Monsinjur Vella l-istess Awtorita` permezz ta` ittra datata 13 ta` Mejju 2011 mibghuta lir-rikorrenti Dr. Deborah Schembri ghan-nom tal-Moviment Iva Ghad-Divorzju / Iva Ghaz-Zwieg infurmatha li 'l-Awtorita` tax-Xandir qed twaqqaf b'mod immedjat ix-xandir ta` dawn iz-zewg spots li juru r-Rev. Vella ;*

*8. Illi tali decizjoni mehuda mill-Awtorita` intimata tammonta ghal forma ta` censura u limitazzjoni fuq l-espressjoni tar-rikorrenti billi ccahhadhom milli jesprimu ruhhom tramite informazzjoni li tinsab fid-dominju pubbliku u dan b`limitazzjonijiet li ma humiex necessarji f`socjeta` demokratika specjalment f`espressjoni politika dwar kwistjonijiet ta` interess pubbliku ;*

*9. Illi ghalhekk id-decizjoni mehuda mill-Awtorita` tax-Xandir hija wahda li tmur kontra u tivvjola d-dritt ta` l-espressjoni kif protett f`artikolu 10 tal-Konvenzjoni Ewropea inkorporata f`Kapitolu 319 tal-Ligijiet ta` Malta u f`artikolu 41 tal-Kostituzzjoni ta` Malta ;*

*10. Illi tali vjolazzjoni hija wahda aktar serja meta wiehed iqis li d-decizjoni ta` l-Awtorita` intimata ccahhad lir-rikorrenti milli jesprimu ruhhom bil-mod li ghazlu*

*f`mument prekarju billi fadal biss ftit granet ghaz-zamma tar-referendum konsultattiv ;*

*Ghaldaqstant ir-rikorrenti jitolbu bir-rispett lil dina l-Onorabbli Qorti joghgobha :*

*(1) Tiddikjara li d-decizjoni mehuda mill-Awtorita` tax-Xandir u kontenuta fl-ittra mibghuta lir-rikorrenti Dr. Deborah Schembri ghan-nom tal-Moviment Iva ghad-Divorzju / Iva Ghaz-Zwieg tammonta ghal vjolazzjoni tad-dritt ta` l-espressjoni kif protett f'artikolu 10 tal-Konvenzjoni Ewropea inkorporata f'Kapitolu 319 tal-Ligijiet ta` Malta u l-artikolu 41 tal-Kostituzzjoni ta` Malta ;*

*(2) Taghti dawk ir-rimedji xierqa u opportuni fosthom li (i) tordna lill-Awtorita` tax-Xandir ixxandar l-ispots in kwistjoni ghall-istess drabi li kien pjanat originarjament fl-iskeda organizzata mill-istess Awtorita` qabel ma jigi mizmum ir-Referendum imhabbar fil-gazzetta tal-gvern tat-30 ta` Marzu 2011 kif fuq premess.*

*Bl-ispejjez kontra l-Awtorita` intimata.*

Rat id-digriet taghha moghti fis-<u>16 ta` Mejju 2011</u> fejn laqghet it-talba tar-rikorrenti (li saret permezz ta` rikors prezentat kontestwalment mal-kawza) sabiex il-kawza tinstema` u tkun deciza bl-urgenza.

Rat id-digriet l-iehor taghha tas-<u>16 ta` Mejju 2011</u> fejn tat lill-intimata sa` nhar il-Hamis <u>19 ta` Mejju 2011 fl-10.00 a.m</u>. sabiex twiegeb u appuntat il-kawza ghas-smigh ghall-istess jum tal-Hamis <u>19 ta` Mejju 2011 f`nofsinhar</u>.

Rat ir-risposta tal-Awtorita` intimata prezentata fit-18 ta` Mejju 2011 li taqra hekk –

*1. Illi fl-ewwel lok u preliminarjament qed jigi eccipit in-nuqqas ta` l-integrita` tal-gudizzju in kwantu l-persuna l-iktar koncernata u li ghandha l-ikbar interess dirett fid-decizjoni jekk ghandux jigi trasmess l-ispot mertu tar-rikors odjern huwa l-Monsinjur Charles Vella. Kif ser jirrizulta ampjament minn dina r-risposta l-Awtorita` esponenti waqfet l-ispot de quo fuq l-oggezzjoni fondata ta` l-istess Monsinjur Vella, in kwantu dik l-ispot kienet tolqot lilu u l-interessi tieghu direttament. Fic-cirkostanzi, zgur li kwalsiasi decizjoni li jista` jinghata fl-atti tar-rikors odjern hija ta` l-ikbar interess guridiku u rilevanza ghall-istess Monsinjur Vella inkwantu tali decizjoni ser timpingi fuq id-drittijiet tieghu.*

*Dwar il-mertu tar-rikors*

*2. Illi l-ispot mertu tar-rikors odjern kien jinkludi footage ta` persuna privata l-Monsinjur Charles Vella, fejn qed jesprimi l-opinjoni tieghu qua cittadin privat u ma kienx qed jesprimi l-opinjoni b`mod formali jew mod iehor f`isem xi entita jew moviment iehor.*

*3. Huwa minnu li inizjalment l-Awtorita` esponenti ppermettiet ix-xandir ta` l-ispot in kwistjoni li fil-fatt ixxandret darbtejn, izda l-Awtorita` rceviet oggezzjoni mill-istess Monsinjur Vella li l-immagni tieghu kienet qed tintuza b`mod abbuziv, Kopja ta` din l-ittra qed tigi hawn annessa u esebita bhala Dokument "A".*

*4. Illi kif gie spjegat lil rikorrenti mill-Awtorita` esponenti, fl-ittra hawn esebita bhala Dokument "B", l-esponenti waqfet l-ispots de quo in kwantu sussegwentement kien irrizulta li la kienet ingabet u wisq anqas intalbet il-permess ta` l-istess Monsinjur Vella ghar-*

*riproduzzjoni ta` footage ta` intervista tieghu u dana anke bi vjolazzjoni tar-regoli u principji generali tax-xandir.*

*5. Illi l-fatt li persuna tissottometti ruhha ghall-intervista fuq stazzjon televisiv ma jfissirx li b`daqshekk tkun irrinunzjat ghal kwalsiasi tip tad-drittijiet ta` l-awtur u drittijiet ohra intellettwali li huma derivanti mill-intervista (inkluz ghalhekk drittijiet ta` copyright u tal-kontroll tar-riproduzzjoni tal-immagni tal-persuna). Ghandu jigi emfasizzat li l-kuncett ta` fair use huwa proprju <u>eccezzjoni</u> ghad-drittijiet ta` l-awtur.*

*6. Fil-kaz odjern jirrizulta li l-ispot mertu tal-kawza huma komposti sostanzjalment minn riproduzzjoni ta` l-immagni u l-kliem tieghu biss u xejn aktar. Dan jesorbitaw l-iskop ta` fair use.*

*7. Iktar u iktar meta jitqies li l-intervista li kien ta` l-imsemmi Monsinjur Vella giet editjata, fis-sens li gie prodott parti zghira biss taghha, b`mod li l-kliem ta` l-istess tnehhew mill-kuntest taghhom u ghalhekk inghataw tifsira ghal kollox differenti mill-messagg li kien ta` fl-intervista originali.*

*8. Illi inoltre u kif gja gie accennat l-istess spot sar bi vjolazzjoni ta` diversi regoli tax-xandir. Fost dan l-esponenti qieghed jaghmel riferenza ghar-regoli dwar l-intervisti kif espressi fl-Avviz Legali 896 tas-sena 2008 ippublikat fis-17 ta` Ottubru 2008 (L.S. 350.14), u partikolarment ghal principji dedotti fir-Regolament 13.1.1 ('Min se jkun intervistat .... ghandu jkun jaf sewwa ... l-ghan tal-programm kif ukoll kif x`aktarx jintuza dak li ser jintqal jew jinghad'); Regolarment 13.1.4 ('Where the subject consents to being interviewed for a different purpose from that covertly intended by the procedures of a news programme, the use of such material without the subject`s permission can only be justified if it necessary in order to make an important point of public interest') ;*

*Regolament 13.2.1 (‘Fl-editjar ta` intervisti ghandha tirbah l-imparzjalita` u l-haqq. Intervisti rekordjati m`ghandhomx jitghawgu bl-editjar b`tali mod li tinhareg minnhom tifsira hazina ta` dak li jkun qal l-intervistat).*

*9. Illi zgur ma jistax jigi permess li intervista ta` cittadin privat tigi trasmessa fi spot politku b`mod li hu jiddahhal fil-kontroversja politika meta hu kien baqa` sieket matul din il-kontroversja (Hu hawnhekk ghandu jigi emfasizzat li l-intervista kienet inghatat ferm qabel mal-kwistjoni tad-divorzju kienet saret kontroversja importanti fil-politika tal-pajjiz) u b’mod li ghalhekk jintuza biex jaghti messagg politiku li qatt ma kien accetta li jaghti. Dan iktar u iktar meta l-messagg in kwistjoni lanqas tirrifletti l-opinjoni vera tieghu.*

*10. Illi ghalhekk jirrizulta li l-Monsinjur Vella ghandu numru ta` drittijiet li jipprotegu l-riproduzzjoni ta` l-immagni u l-opinjoni tieghu, u dana iktar u iktar in kwantu la huwa attiv fil-politika u wisq anqas huwa xi figura pubblika. Inoltre ghandu jigi rilevat li sakemm inqalghet il-kontroversja mahluqa mill-ispot de quo, l-istess Mon. Vella lanqas biss kien esprima ruhu pubblikament fid-dibattitu nazzjonali li beda mas-sejha tar-referendum fuq id-divorzju.*

*11. Illi in kwantu kull spot politika ghandha tkun approvat mill-Awtorita` intimata sabiex tixxandar, u iktar minn hekk huma mxandra direttament mill-Awtorita`, ma ghandu jkun hemm l-ebda dubbju li l-Awtorita` agixxiet korrettement bl-ikbar kawtela u responsabilta` meta tnehhiet l-approvazzjoni taghha fid-dawl ta` l-oggezzjonijiet imressqa mill-istess Mons. Vella ghar-riproduzzjoni ta` l-immagni tieghu, f`liema oggezzjoni rrizulta, fost ohrajn, li lanqas biss ma kien intalab il-kunsens tieghu, jew mod iehor gie nfurmat li kien ser jintuza xi riproduzzjoni tieghu.*

*12. Id-decizjoni lamentata fir-rikors odjern bl-ebda mod ma hija xi forma ta` censura jew limitazzjoni fuq l-espressjoni tar-rikorrenti izda kienet biss protezzjoni tad-drittijiet li prima facie jappartjenu lill-istess Monsinjur Vella, u liema drittijiet setghu jigu eluzi rreparabbilment.*

*13. Illi fl-ahhar mill-ahhar l-Awtorita` ghandha l-kompitu li tassigura li f`kull xandira televisiva, partikolarment dawk maghmulin fl-ambitu ta` referendum u elezzjoni, jigi assigurat sens ta` bilanc bejn id-drittijiet tal-partijiet kollha. Fil-kaz odjern ghandu jirrizulta li dan il-bilanc ghandu jgharbel mhux biss l-interessi taz-zewg 'fronti' tar-referendum – u cioe` l-moviment favur 'Iva' u dak favur 'Le' – izda anke ta` persuna privata li giet imzefna fin-nofs meta ma kenitx qieghda tesprimi ruhha pubblikament fl-ambitu tar-referendum.*

*14. Illi ghalhekk bir-rispett kollu l-awtorita` esponenti terga` ttenni li l-gudizzju odjern ma jistax ikun integru fl-assenza ta` l-istess Monsinjur Charles Vella, in kwantu huma d-drittijiet personali tieghu li talvolta jistghu jigu eluzi bil-produzzjoni ta` l-ispot mertu tar-rikors odjern.*

*15. Ghaldaqstant l-esponenti jeceipixxi bir-rispett li t-talbiet attrici huma nfondati fil-fatt u fid-dritt u ghandhom jigu michuda bl-ispejjez kontra l-istess rikorrenti.*

Rat li fl-udjenza tal-kawza tad-19 ta` Mejju 2011 kienet trattata l-ewwel l-eccezzjoni preliminari tan-nuqqas ta` integrita` tal-gudizzju.

Rat is-sentenza *in parte* moghtija fl-istess udjenza fejn, wara li semghet is-sottomissjonijiet tad-difensuri tal-partijiet, u ghar-ragunijiet hemm indikati, cahdet l-istess eccezzjoni bl-ispejjez kontra l-Awtorita` intimata.

Rat li fl-istess udjenza, din il-Qorti mbaghad ghaddiet ghat-trattazzjoni ta` rikors, li kien prezentat dak il-jum stess tal-udjenza, fejn l-Av. Dr. Robert Tufigno, bhala mandatarju specjali tal-assenti Reverendu Monsinjur Charles Vella, ghar-ragunijiet hemm indikati, talab li jew din il-Qorti tordna *ex officio* l-kjamata fil-kawza tal-istess Av. Dr. Robert Tufigno nomine inkella tawtorizzah jintervjeni fil-kawza *in statu et terminis.* F`kull kaz, huwa talab inoltre li jipprezenta risposta.

Rat id-digriet taghha moghti fl-istess udjenza fejn din il-Qorti, filwaqt li cahdet it-talba tal-Av. Dr. Robert Tufigno nomine ghall-kjamata fil-kawza tieghu *ex officio* laqghet it-talba tieghu sabiex jintervjeni fil-kawza *in statu et terminis* b`dan illi stante illi se jkun biss intervenut u mhux parti, huwa nghata l-fakolta` li jaghmel id-domandi li jixtieq u li jkunu rilevanti ghall-mertu tal-kawza u fil-waqt opportun anke jaghmel l-osservazzjonijiet tieghu, ma kienx permess lilu li jipprezenta risposta stante li l-intervenut ma kienx parti f'kawza izda biss osservatur, fejn lanqas jista` jigi kundannat u fejn, ghax intervenut, jinkorri biss l-ispejjez tieghu u ta` ebda parti ohra.

Rat li fl-istess udjenza din il-Qorti akkordat it-talba tal-Av. Dr. Robert Tufigno nomine li jressaq provi.

Rat li fl-istess udjenza, din il-Qorti ghaddiet imbaghad sabiex tisma` l-provi dwar il-mertu.

Semghet ix-xhieda *viva voce* ta` Av. Dr. Deborah Schembri, Hermann Grech, Norman Hamilton u David Micallef St. John li r-rikorrenti ressqu bhala xhieda taghhom u qieset id-dokumenti li tressqu fl-istadju tal-provi tar-rikorrenti.

Semghet ix-xhieda *viva voce* ta` Anthony Tabone u Pierre Cassar li l-Awtorita` intimata ressqet bhala xhieda

taghha kif ukoll qieset id-dokumenti li tressqu fl-istadju tal-provi tal-intimata.

Semghet ix-xhieda *viva voce* ta` Av. Dr. Robert Tufigno u qieset id-dokumenti li ressaq l-intervenut fil-kawza.

Semghet is-sottomissjonijiet tad-difensuri.

Rat id-digriet taghha moghti fl-istess udjenza tad-19 ta` Mejju 2011 fejn halliet il-kawza ghas-sentenza ghal-lum.

**Ikkunsidrat :**

**II. <u>Il-procedura dwar xandiriet inkluz l-i*spots* fuq TVM miftehma bejn l-Awtorita` tax-Xandir u l-Movimenti tal-IVA u tal-LE fir- Referendum</u>**

<u>Anthony Tabone</u>, Chairman tal-Awtorita` tax-Xandir, xehed hekk –

*Dawn l-ispots huma parti minn skeda ta' programmi li gew maqbula bejn iz-zewg movimenti. Kull moviment gie allokat numru ta' spots ta' hinijiet, u kull moviment ikollu d-dritt li within a certain time qabel ma jigi trasmess l-ispot jikkonsenja lill-Awtorita' bl-ispot biex ikun jista' jigi trasmess. Fil-kwistjoni tal-ispots li huma under discussion gew prodotti minghand is-Sur Micallef St. John.*

Kemm ic-Chairman kif ukoll Pierre Cassar, Kap Ezekuttiv tal-Awtorita` tax-Xandir, ikkonfermaw li r-regolamenti, jew direttivi (kif sejhithom id-difensur tar-rikorrenti waqt it-trattazzjoni finali tal-kawza) kienu accettati miz-zewg movimenti. Hekk ikkonfermat ukoll ir-

rikorrenti Av. Dr. Deborah Schembri fix-xhieda taghha - *Lili baghtuli, l-awtorita' baghtitli dokument, fejn hi qaltli x'inhuma r-regolamenti rigward ix-xandiriet li riedu jsiru politici, inkluzi l-ispots. Ahna aderixxejna ma' dan.*

Meta tat ix-xhieda taghha, ir-rikorrenti Av. Dr. Deborah Schembri esebiet ir-regoli tal-iskema (Dok DS1). Ir-regola l-aktar rilevanti ghall-kawza tal-lum hija dik li tinsab fit-tieni paragrafu tat-tieni pagna u taqra hekk –

*F`kaz li membri tal-pubbliku jintwerew f`xi produzzjoni jew spot tal-Movimenti, ghandu jigi zgurat li ikun hemm il-kunsens bil-miktub ta` tali persuni biex dawn jidhru fil-produzzjoni jew spot. L-Awtorita` tirriserva d-dritt li titlob kopja tal-kunsens lill-Movimenti qabel mal-ispot jew produzzjoni tithalla tixxandar fuq TVM.*

*L-Awtorita` tirriserva d-dritt li ma xxandarx spot jew produzzjoni jekk fil-fehma taghha l-kontenut ta` tali jkun jikser xi provvedimenti legali. F`dan il-kaz, l-Awtorita` tista` titlob lill-Moviment biex 'jeditja' dik il-parti li l-Awtorita` jew id-delegat taghha jkun qed joggezzjona ghaliha. Kwalunkwe decizjoni tal-Awtorita` hija finali.*

Fir-risposta taghha l-Awtorita` tax-Xandir ghamlet ukoll riferenza ghall-*Requirements as to Standards and Practice Applicable to News Bulletins and Current Affairs Programmes* li kienu pubblikati fil-harga tal-Gazzetta tal-Gvern tas-17 ta` Ottubru 2008.

Irreferiet in partikolari ghal parti mill-paragrafu 13.1.1. li jaghmel parti minn Sezzjoni 13 bit-titolu "Intervisti". U cioe` fejn jinghad hekk – *Interviewees dealing with political or industrial controversy or current public policy should be made adequately aware of the format, subject matter and purpose of the programme to which their contribution is likely to be used. The broadcaster shall retain that part of the interview wherehe*

*has sought the consent of the interviewee to record the interview …*

Irreferiet ukoll ghall-paragrafu 13.1.4 li jaqra hekk - *Where the subject consents to being interviewed for a different person from that covertly intended by the producers of a news programme, the use of such material without the subject`s permission can only be justified in it is necessary in order to make an important point of public interest.*

Waqt it-trattazzjoni finali tal-kawza, id-difensur tar-rikorrenti ma ghamlitx riferenza ghal dawn ir-*Requirements*.

**Ikkunsidrat :**

**III. <u>Ix-xhieda ta` Norman Hamilton dwar il-programm "Bla Agenda" fuq One Television tas-6 ta` Marzu 2010</u>**

In vista ta` dak li nghad fir-risposta tal-Awtorita` tax-Xandir jassumi rilevanza dak li xehed Norman Hamilton, producer tal-programm "Bla Agenda" tas-6 ta` Marzu 2010 li deher fuq One Television.

Norman Hamilton xehed li fil-programm kellu diversi mistiedna fosthom Mons Charles Vella. Lil dan intervistah dwar diversi suggetti. Id-divorzju kien trattat lejn l-ahhar tal-intervent ta` Mons Vella fil-programm.

Kif kien dmir taghha, izda anke bis-sabar, din il-Qorti rat id-DVD tal-programm "Bla Agenda" in kwistjoni. Rat ukoll id-DVD l-iehor li kien jinkludi z-zewg spots in kwistjoni.

Din il-Qorti tghid mill-ewwel li l-intervista kienet skjetta u hielsa minn formalita`. Mons Vella kien introdott bhala Fundatur tal-Moviment ta' Cana. Huwa spjega kif twaqqaf il-Moviment aktar minn hamsin sena ilu, id-diffikultajiet sabiex t-tematika tieghu tigi accettata mill-kleru ta` dak iz-zmien u l-appogg li sab minghand Mons. Arcisqof Mikiel Gonzi. Spjega kif wara erbgha u tletin sena kien mistieden mill-Isfqijiet Taljani biex iwaqqaf movement simili fl-Italja u hekk ghamel. Fisser kif beda jikkollabora ma' Don Luigi Verze` fl-Isptar San Raffaele. Ighid kif kien li gab lil Mother Theresa ta` Calcutta f`Malta u kif il-messagg semplici taghha kien laqat lil Mons Gonzi. Tkellem dwar il-hbiberija u r–relazzjoni tieghu mill-qrib ma` Albano Carrisi u l-familja tieghu. Jistqarr dwar l-imhabba tieghu ghall-musika tal-Grupp Rock maghruf bhala U2. Tkellem dwar kif ghandha tkun miggielda l-korruzzjoni, l-ingustizzja socjali u l-faqar. Lejn l-ahhar tal-intervista tkellem dwar iz-zwieg u d-divorzju. Din tal-ahhar kwistjoni tigi trattata aktar 'il quddiem.

Fix-xhieda tieghu, Norman Hamilton jispjega li estratt mill-intervent ta` Mons Vella f`dak il-programm rega` ntwera fi programm iehor "Bla Agenda" li sar aktar kmieni din is-sena fejn hadu sehem l-Onor. Edwin Vassallo u r-rikorrenti Av. Dr. Deborah Schembri.

Huwa kkonferma li bhala producer ta' "Bla Agenda" kien ta l-kunsens tieghu sabiex parti mill-intervent ta` Mons Vella fil-programm tas-6 ta` Marzu 2010 jintuza ghall-ispots tal-Moviment tal-IVA.

Kompla jixhed hekk -

*Prof. Ian Refalo: X'tip ta' kunsensi hadt mill-Monsinjur Vella meta inti tajtu biex jidher fuq il-programm tieghek?*

*Xhud : M'ghandi bzonn l-ebda tip ta' kunsens, kien mistieden hemmhekk joqghod ghall-mistoqsijiet illi jiena naghmillu.*

*Prof. Ian Refalo : Imma inti gharraftu li dan il-programm ikun jista' jintuza fi programmi ohra, f'affarijiet ohra ? Tak xi kunsens biex dak li jghid u jaghmel hemmhekk tuzah kif trid ? Jew kien semplicement qieghed jidher ghal dak il-programm biss ?*

*Xhud : Jiena kull min jidher fil-programm awtomatikament dak il-programm sar proprjeta' pubblika. Dak il-programm jitla' fuq id-di-ve.com, kulhadd jista' jarah meta jrid.*
…
*Xhud : Il-bniedem deher fil-programm, qal xi haga, he stands by what he said.*

*Prof. Ian Refalo : Hlief il-kunsens tieghu biex jidher fuq dak il-programm fis-sens illi jaccetta li jidher fuq il-programm, inti ma hadt l-ebda kunsens iehor dwar il-modalitajiet kif jista' jintuza fil-futur dak il-programm minnek ?*

*Xhud : La hadt u la tlabt kunsens mill-Monsinjur Vella u la mill-elf u mitejn persuna li dehru fuq il-programm tul dawn l-ahhar snin, qatt.*

*Qorti : Have you ever discussed this particular issue with any of your guests ? This particular issue, isma' jekk inti tidher illum jista' ghada pit'ghada l-istazzjon fejn qieghed inxandar ipoggih fuq programm iehor tieghu, have you ever discussed this ?*

*Xhud : Le, qatt ma ddiskutejtha, pero' xejn ma zamm l-ebda gurnal dwar kwalunkwe programm tieghi, xejn ma zamm l-ebda gurnal, l-ebda taqsima ta' stazzjon ta' ahbarijiet, li jippikkjaw, jilliftjaw u jxandru, qatt.*

L-implikazzjoni ta` dan ir-respons tigi trattata `l quddiem.

**Ikkunsidrat :**

**IV. <u>L-*ispots* in kwistjoni u l-vicenda tax-xandir taghhom</u>**

Jirrizulta bhala fatt inkontestat li fiz-zewg spots in kwistjoni tidher l-immagini wahedha ta` Mons. Charles Vella. Mhux kontestat li Mons Vella waqqaf il-Moviment ta` Cana aktar minn hamsin sena ilu, ilu s-snin jirrisjedi b`mod permanenti gewwa Milan fl-Italja ghalkemm ta` spiss ikun Malta kif stqarr huwa stess fil-programm “Bla Agenda”.

L-ispots ittiehdu mill-programm “Bla Agenda” li xxandar “live” nhar is-Sibt 6 ta` Marzu 2010 fuq One Television, liema programm ghandu lil Norman Hamilton bhala producer u konduttur.

L-ispots in kwistjoni kienu tnejn separati : wiehed ta` tnejn u hamsin (52) sekonda u iehor ta` minuta (1) u tletin (30) sekonda, u kellhom jixxandru fil-*prime time*.

<u>Pierre Cassar</u>, Kap Ezekuttiv tal-Awtorita’ tax-Xandir, xehed li meta hu u l-kollega tieghu Joanna Spiteri raw l-ispots flimkien ma` David Micallef St. John mill-Moviment rikorrenti huwa qal fil-pront lill-istess David Micallef St. John li kellu bzonn jiehu parir legali dwar jekk jistax jixxandar jew le. Fix-xhieda tieghu, Pierre Cassar ighid -

*u kont irrimarkajt ukoll jekk Dun Charles Vella r-Reverendu kienx jaf biha.*

*Prof. Ian Refalo : U x’qallek?*

*Xhud : Hu kien qalli li ma jhossx li ghandu bzonn ikun jaf biha r-Reverendu.*

*Qorti : Jigifieri car u tond qalhielek mill-ewwel ?*
*Xhud : Yes, Sur Imhallef, iva.*

Jirrizulta li l-ispots kienu vizjonati wkoll mic-Chairman tal-Awtorita` tax-Xandir u mill-Professur Dr. Kevin Aquilina. L-Awtorita` tax-Xandir talbet il-clearance tal-copyright tal-programm "Bla Agenda" billi l-ispots ittiehdu minn dak il-programm. Dan il-clearance kellu jigi jew minn One Television inkella minghand Norman Hamilton. Fil-fatt kien Norman Hamilton li ta l-clearance permezz ta` email.

L-Awtorita` tax-Xandir kellha parir legali fis-sens li taghti l-go ahead sabiex l-ispots jixxandru. Jekk ikun hemm ilment minn Mons. Vella, allura jew jinghata right of reply inkella jitwaqqfu.

Ic-Chairman tal-Awtorita' tax-Xandir ighid car -

*U l-parir li kellna kien illi dak il-hin taghmlu iktar hazin jekk izzommuh milli thallu li jigi trasmess, pero' jekk tintalab jew right of reply jew ikun hemm oggezzjoni naturalment intom ma jkollkomx alternattiva ohra li zzommuh.*

L-ispots ixxandru fit-12 ta` Mejju 2011.

L-ghada li l-ispots ixxandru ghal habta tas-2.30 p.m. mar l-ufficcju tal-Awtorita` tax-Xandir l-Av. Dr. Robert Tufigno personalment u pprezenta ittra ghan-nom ta` Mons Vella (Dok A) fejn, ghar-ragunijiet moghtija fl-ittra li kienet datata 13 ta` Mejju 2011, talab li l-ispots jitwaqqfu.

Ic-Chairman kompla jixhed hekk -

*Sussegwentement gie trasmess, l-ghada filghodu gie l-protest fil-verbali, fis-saghtejn u nofs ta' wara*

*nofsinhar gie l-protest ufficcjali ghan-nom tal-Monsinjur Vella, u naturalment hemmhekk anke ahna kkomunikajna, ikkomunikajna wkoll mal-legal adviser taghna u ntbaghtet l-ittra lill-moviment fejn infurmajnihom illi dawn ser jigu mizmumin ghaliex fl-opinjoni taghna once li l-persuna li qed tidher fiha qed tghid mhux biss illi ma ntalbitx kunsens imma li hi addirittura kontra, il-veduti taghha huma kontra dawk li qed jigu espressi f'dak il-clip, ahna dehrilna li nkunu qeghdin nonqsu jekk inhallu li jidher spot li suppost huwa informattiv biex jinforma lill-pubbliku fuq din il-materja, meta nafu li l-persuna li qed tidher u li qed tigi progettata bhala li taghti dik il-veduta dak il-hin, u kienet ser taghmilha pubblika, u qieghed jghid li assolutament qed jigi kwotat out of context u li hu ma jaqbilx ma' dak illi qieghed jinghad illi hu qed jigi nterpretat li huwa favur id-divorzju …*

Wara li qieset li *ma kienx hemm il-kunsens tar-Rev. Vella biex jidher f`dan il-clip* l-Awtorita` hadet decizjoni li twaqqaf dawk iz-zewg spots u dik id-decizjoni kienet komunikata b`ittra tat-13 ta` Mejju 2011 (Dok B) fl-3.52 p.m. lill-Av. Dr. Deborah Schembri. Fl-ittra, ffirmata minn Pierre Cassar, inghad ukoll – *Peress li dawn l-ispots ma jistghux jixxandru, l-Awtorita` qed taghtik il-fakolta` li tindikali spots ohrajn li behsiebek tuza minflok.*

Fil-fatt ir-rikorrenti baghtu l-ispots alternattivi.

Mons. Vella ma talabx dritt ta' risposta. Ghalhekk ghal din il-Qorti mhuwiex rilevanti xi procedura kienet tadotta li kieku saret dik it-talba ghaliex il-kaz jaqa` ghal-livell ta` kongettura ladarba ma jirrizultax li kien hemm *contingency plan* - cert u determinat – kif kienet materjalment sejra tinghata r-right of reply li kieku saret talba f`dak is-sens.

Mons Vella hareg stqarrija ghall-istampa fil-5.29 p.m.

Dwar l-ispots *ut sic* kemm Av. Dr. Deborah Schembri kif ukoll David Micallef St. John ikkonfermaw li l-intervent ta` Mons Vella ma kienx *doctored*.

Dwar l-ispots, David Micallef St. John xehed hekk -

*Kien hemm wiehed ta' approximately fifty two seconds u l-iehor jiskorri l-minuta. Wiehed minnhom kien l-ewwel parti tal-intervista li ta lil Norman Hamilton u t-tieni wiehed kien parti mit-tieni parti, mill-ahhar parti. Fl-ewwel parti m'hemmx editing ta' xejn, m'hemmx cuts ta' xejn, u fit-tieni wiehed kull ma hemm cut li nehhejna lil Norman Hamilton milli jitkellem. Imma otherwise integri, fil-fatt tarahom jigifieri.*

David Micallef St. John jixhed li jekk tara l-*video* integru, l-intervista integra, u tara d-DVDs tara li fil-fatt m'hemmx *cuts*, cioe' *cuts* fejn jista' bniedem jghid li hemm il-kliem nieqes, l-unika kliem nieqes li hemm huwa Norman Hamilton jistaqsi domanda, li fil-fatt jghid inti kontra d-divorzju jew xi haga hekk jew taqbel mad-divorzju, dik il-parti biss naqqasniha.

Dwar dan il-punt partikolari, din il-Qorti tghid li huwa veru li fi "Bla Agenda" Norman Hamilton hekk staqsa, u Mons Vella, wara li wiegeb li dak kien suggett li wahdu ried programm shih (ahseb u ara, tghid din il-Qorti, *clip* qasir !) stqarr li *divorce does not scare me* u qal ghaliex.

L-ghaliex ma tidher imkien fl-ispots.

Mhux kontestat li taht l-immagni ta` Mons Vella jitkellem kien hemm il-logo tal-Moviment Iva ghax hekk tesigi l-Awtorita` tax-Xandir. Pero` din il-Qorti tghid li ladarba dak il-logo kien essenzjali, daqstant vitali kien li

Mons Vella jaghti l-kunsens tieghu sabiex parti zghira hafna minn dak li stqarr, qabel ma fegget il-kampanja referendarja jintuza mill-Moviment tal-IVA. Barra minn hekk kien ukoll daqstant vitali li l-messagg li ried jaghti Mons. Vella bl-intervent tieghu fi "Bla Agenda" ma jitlifx ghal kollox il-kuntest tieghu billi estratt zghir hafna minnu ttiehed mill-Moviment tal-IVA ghall-kampanija referendarja taghha. U din il-Qorti tghid allura li l-kontenut tal-ispot johrog barra mill-kuntest tieghu dak li fit-totalita` tieghu tkellem dwaru Mons. Vella fi "Bla Agenda".

David Micallef St. John ikompli jixhed hekk –

*Qorti : Sur Micallef St. John, l-Awtorita' tax-Xandir qed tghid, id-difiza taghha, illi intom dan l-ispot, bi kliem inqas kumplikat biex niftehmu, intom qbadtu din l-intervista kienet kemm kienet twila li saret ma' Norman Hamilton, qbadtu dak li kien jaqbel lilkom u ghat-tezi taghkom, u poggejtuha fuq dan l-ispot, u allura u hekk tghid l-awtorita', intom dak kollu li inghad f'dak l-ispot allura gie out of context, taken out of context fl-isfond ta' dak illi inghad f'dik l-intervista. X'ghandek xi tghid dwar dan ?*

*Xhud : Jien kompletament ma naqbilx, anzi to the contrary ta' dak li qieghed jinghad kieku ahna hallejna barra minhabba kwistjoni ta' hinijiet, minhabba l-location ta' time u kollox, hallejna barra bicciet mill-intervista li kieku taghmlilna gid kbir lill-kampanja. Hallejniha barra minhabba l-fatt illi ahna ridna naqbdu partijiet zghar milli tkellem jigifieri. Hemm partijiet mill-intervista shiha jigifieri li stajna uzajnihom. L-intervista trid taraha kollha.*

David Micallef St. John jixhed li kull permess anke bil-miktub li talbet l-Awtorita` hadulhom. Mhux hekk pero` rrizulta ghaliex qatt ma kellhom f`idejhom il-kunsens ta' Mons Vella anke jekk l-Awtorita` ma talbitux mir-rikorrenti meta ssottomettew l-ispots.

**Ikkunsidrat :**

## V. <u>Il-posizzjoni u l-*mankat* kunsens ta` Mons. Vella</u>

L-argument tar-rikorrenti, riaffermat fis-sottomissjonijiet finali tad-difensur taghhom, huwa li ma kellhomx ghalfejn igibu l-kunsens tal-Mons. Vella, qabel johorgu l-*clip* tal-programm “Bla Agenda” ghall-fini tal-ispots tal-kampanja taghhom favur l-IVA fir-referendum ta` nhar is-Sibt li gej ghaliex Mons Vella huwa persuna pubblika, dak li qal fuq “Bla Agenda” kien sar dominju pubbliku u kellhom il-permess tal-producer tal-programm “Bla Agenda” biex jaghmlu l-ispots.

Mill-mod kif kienu kondotti d-domandi lix-xhieda kif ukoll mix-xhieda li tressqu, jidher car li r-rikorrenti ttentaw jaghmlu l-prova li Mons Vella huwa figura pubblika waqt li l-intimati u l-intervenut fil-kawza pprovaw ighidu li Mons Vella ma kellu l-ebda kariga pubblika.

Issa l-espressjoni “figura pubblika” mhijiex definita fid-dritt. Tant dan huwa hekk li fis-sottomissjonijiet finali taghhom il-partijiet u l-intervenut fil-kawza ma hargu bl-ebda tifsira legali ta` din l-espressjoni. Din il-Qorti tghid li l-buon sens ghandu jkun dak li jaghti l-ahjar direzzjoni.

Din il-Qorti tghid li huwa nkontestat li llum f`Malta, Mons. Vella ma jokkupa l-ebda kariga istituzzjonali, fis-sens l-aktar wiesgha tal-kelma, kemm fejn jidhol l-Istat kif ukoll fejn si tratta tal-Knisja. Certament pero` Mons. Vella, anke bhala cittadin privat, huwa <u>persuna influwenti</u> fl-ewwel lok ghaliex mhux biss waqqaf izda mexxa ghal hafna snin il-Moviment ta` Cana, fit-tieni lok ghaliex fl-imghoddi kien figura istituzzjonali fl-Italja fil-qasam tal-

familja, fit-tielet lok ghaliex anke jekk illum cittadin privat huwa espert tal-problemi tal-familja b`mod generali u kif jahsibha jghodd hafna fil-kuntest tas-socjeta` taghha, u fir-raba` lok ghaliex sarraf il-hsieb tieghu, bazat fuq xoghol u esperjenza ta` ghexieren ta` snin, f`artikoli, intervisti (bhal dik ta` s-16 ta` Awissu 2009 li xehed dwarha Hermann Grech *deputy editor* ta` *The Sunday Times*), dehriet fuq it-televizjoni (bhal dik ta` “Bla Agenda”) u kitbiet ohra (bhal ma huwa l-ktieb esebit Dok RT3).

Hermann Grech, *deputy editor* ta` *The Sunday Times*, xehed hekk –

*Prof. Refalo : F`liema sens il-Monsinjur Vella huwa figura pubblika ?*

*Xhud : Huwa l-fundatur ta’ Cana, huwa bniedem jiena l-mod kif narah persuna li he’s still in the public eye, ghandu hafna xi jghid, jiena l-fatt li he founded the very notion of Kana, it makes him a public figure.*

Din il-Qorti tghid li propju ghax Mons Vella persuna influwenti huwa car u manifest li l-Moviment tal-IVA pprova jislet parti zghira hafna minn dak li qal fi “Bla Agenda” *per portare acqua al suo mulino.*

It-tezi ta` Mons Vella bhala intervenut fil-kawza hija estratt zghir hafna minn dak li stqarr fi “Bla Agenda” meta l-kampanja referendarja ma kenitx ghadha tnediet ittiehdet minghajr il-kunsens tieghu sabiex intuzat fl-ispot tal-Moviment tal-IVA meta huwa zamm barra mill-kontroversja referendarja u giet *out of context* ma` dak li kien stqarr ma` Norman Hamilton.

Av. Dr. Robert Tufigno xehed hekk -

*jien pero’ qalli ilhom jippruvaw idahhluni fil-kampanja u jien irrezistejt, fil-fatt kiteb ittra lit-Times li jien esebejt,*

*ghax ippruvaw idahhluh fid-diskussjoni wkoll. Imbaghad hu kiteb ittra biex jikkjarifika li hu ma jridx jidhol fiha din u hekk jghid, u qalli wkoll illi l-ktieb li semmejt huwa ezempju car tal-pozizzjoni tieghu. Imbaghad li ghamilt jien Sur Imhallef illi ghedtlu li smajt li saret din il-kawza, qalli jekk tista' inti tiddefendi l-interessi tieghi jekk joghgbok ghinni, u ghalhekk kien l-iskop li naghmel dak ir-rikors, ghax hu hass li r-reputazzjoni tieghu kemm ta' sacerdot, kemm ta' bniedem li ilu jahdem fil-kamp tal-familja favur il-mizzewgin u l-familja, hass illi r-reputazzjoni tieghu qieghda tigi ribaldata, qalli ghaliex dak il-clip mhux qed jintuza biex jaghti informazzjoni imma biex juzaw il-persuna tieghi biex jivvutaw iva ghad-divorzju, qalli meta jien kontra d-divorzju.*

Huwa cert, u dan jirrizulta minghajr dubbju, li Mons Vella pubblikament ma tax l-appogg tieghu ghall-Moviment tal-IVA.

Kull ma jirrizulta li ghamel kien li ta l-veduti tieghu anke dwar id-divorzju fil-pubbliku. Fl-istess waqt ghax ghamel hekk ma jfissirx li dak li qal sar dominju pubbliku u allura jista` jigi riprodott minghajr il-kunsens tieghu minn Moviment tal-IVA li ma jirrizultax li kiseb l-appogg minghandu ghall-istanza tieghu fir-Referendum.

Fl-intervent tieghu fi "Bla Agenda" it-temi trattati minn Mons Vella kienu cari u ma kellhomx jigu approprijati minn parti jew ohra fir-referendum minghajr il-kunsens tieghu propju ghaliex hsieb huma interccjat ma` iehor. Mons Vella ighid li l-ebda Kattoliku anke jekk mhux prattikanti m`ghandu jigi sfurzat jizzewweg bil-Knisja. Ghax iz-zwieg huwa sagrament. Anke jekk jidhol id-divorzju, il-Knisja tibqa` tinsisti li z-zwieg huwa sagrament u huwa ndissolubbli. Ma jfissirx li ghax zwieg jispicca, jispicca mieghu z-zwieg Kattoliku. Wahda mill-kawzi principali tal-annullament tal-Knisja hija l-immaturita` psikologika li ma tiddependix mill-eta`. Ghalhekk ghandu jkun preparazzjoni ahjar u tajba ghaz-zwieg. Min ma

jasalx ghandu jkun liberu li jaghzel it-triq tieghu : *libero stato, libera chiesa*. Invoka dibattitu parlamentari liberu. Sostna li ma setax jaghlaq ghajnejh ghal dawk il-koppji mifrudin li qeghdin isofru.

Din il-Qorti trid tkompli tissottolinea li in kwistjoni f`din il-kawza mhumiex il-veduti ta` Mons Vella. Dawn qeghdin hemm miktuba fl-artikolu tas-*Sunday Times* tas-16 ta` Awissu 2009, fil-ktieb tieghu Dok RT3, f`dak li qal fuq Bla Agenda, u fl-istqarrija ghall-istampa tal-Mejju 2011. Li certament huwa assolutament rilevanti huwa jekk kienx rikjest li Mons Vella jaghti l-kunsens tieghu sabiex dak li qal fi "Bla Agenda" jigi riprodott mill-Moviment tal-IVA ghall-fini tal-kampanja ta' informazzjoni ghar-Referendum. Din il-Qorti tghid li iva kien hemm il-htiega tal-kunsens ta` Mons Vella anke jekk dak li stqarr, qalu fil-pubbliku ghaliex fejn qalu ma kienx parti mill-kampanja referendarja, anke milli qal qaghad attent li ma jiehux naha hlief li jinvoka l-esperjenza tieghu anke ghaliex hekk kien accetta li jaghmel il-Moviment tal-IVA mal-Awtorita` tax-Xandir kif rajna.

Dwar Mons Vella fl-ispots David Micallef St. John xehed hekk –

*Qorti : Sur Micallef St. John, ghaliex dak li qal Monsinjur Vella fl-intervista ta' Norman Hamilton kienet fil-fehma taghkom* beneficial *ghall-kampanja taghkom tant illi dahhaltuha fi spot biex in-nies jivvutaw iva flok jivvutaw le, ghaliex?*

*Xhud : Nixtieq nibda billi nghid illi ahna fil-bidu nett meta bdejna l-kampanja jigifieri ahna l-pjan taghna kien li tkun kampanja informattiva. Unfortunately kif taf inti, kif jaf kulhadd, is-sitwazzjoni nbidlet, dahlu l-partiti politici, il-knisja, u hafna esponenti differenti. Unfortunately is-sitwazzjoni kif saret spiccat illi dan li ntqal minn Father Charles sar asset, specjalment meta jkun hemm qassisin illi sa sentejn ilu kienu jghidu mod fuq id-divorzju u f'daqqa wahda din il-gimgha qed jghidu mod iehor. Allura fuq dak*

*il-kuntest ahna dehrilna li ghandna nifthu ghajnejn il-poplu li under no pressure certu qassisin tkellmu in favour tad-divorzju, apparti Father Charles hemm izjed.*

**Ikkunsidrat :**

**VI. <u>Art.41 tal-Kostituzzjoni ta` Malta</u>**

Ir-rikorrenti qeghdin isostnu l-istanza taghhom abbazi tal-Art.41 tal-Kostituzzjoni ta` Malta.

Din il-Qorti tghid li l-parti tal-Art.41 li hija rilevanti ghall-kawza tal-lum taqra hekk –

*(1) Hlief bil-kunsens tieghu stess jew bhala dixxiplina tal-genituri, hadd ma ghandu jigi mfixkel fit-tgawdija tal-libertà tieghu ta' espressjoni, maghduda libertà li jkollu fehmiet minghajr indhil, libertà li jircievi idejiet u taghrif minghajr indhil, libertà li jikkomunika idejiet u taghrif minghajr indhil (kemm jekk il-komunikazzjoni tkun lill-pubbliku in generali jew lil xi persuna jew klassi ta' persuni) u libertà minn indhil dwar il-korrispondenza tieghu.*

*(2) Ebda haga li hemm fi jew maghmula skond l-awtorità ta' xi ligi ma ghandha titqies li tkun inkonsistenti ma' jew bi ksur tas-subartikolu (1) ta' dan l-artikolu safejn dik il-ligi taghmel provvediment -*

*(a) li jkun mehtieg ragonevolment -*

*(i) fl-interess tad-difiza, sigurtà pubblika, ordni pubbliku, moralità jew decenza pubblika, jew sahha pubblika ; jew*

*(ii) sabiex jigu protetti r-reputazzjonijiet, drittijiet u libertajiet ta' persuni ohra, jew il-hajja privata ta' persuni li jkollhom x'jaqsmu ma' proceduri legali, jigi evitat il-kxif ta'*

*taghrif ricevut sigriet, tigi mizmuma l-awtorità u l-indipendenza tal-qrati, jigu protetti l-privileggi tal-Parlament, jew jigu regolati t-telefonu, it-telegrafu, il-posta, ix-xandir bil-wireless, it-televizjoni jew mezzi ohra ta' komunikazzjoni, esibizzjonijiet pubblici jew divertimenti pubblici ; jew …*

Id-difensuri ma ghamlux riferenza ghal din id-disposizzjoni fis-sottomissjonijiet finali taghhom.

Min-naha taghha, din il-Qorti tghid li l-punt krucjali huwa jekk *sabiex jigu protetti r-reputazzjonijiet, drittijiet u libertajiet ta' persuni ohra* (f`dan il-kaz) kellhiex kull jedd l-Awtorita` tax-Xandir, bl-awtorita` tal-ligi, ma thallix li l-ispots jibqghu jixxandru, u allura dak li ghamlet l-Awtorita` ma kellux jitqies bhala interferenza llegittima ghad-dritt tal-espressjoni tar-rikorrenti.

**Ikkunsidrat :**

**VII. <u>L-Art.10 tal-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem</u>**

Disposizzjoni ohra li fuqha r-rikorrenti qeghdin isostnu l-istanza taghhom huwa l-<u>Art.10 tal-Konvenzjoni Ewropeja</u> (Kap 319 tal-Ligijiet ta` Malta) li jaqra hekk -

*(1) Kulhadd ghandu d-dritt ghal-libertà ta' espressjoni. Dan id-dritt jinkludi l-libertà li jkollu opinjonijiet u li jircievi u jaghti informazzjoni u ideat minghajr indhil mill-awtorità pubblika u minghajr ma jittiehed kont ta' fruntieri. Dan l-artikolu ma ghandux jimpedixxi Stati milli jehtiegu licenzi ghax-xandir, televizjoni jew imprizi cinematografici.*

*(2) L-ezercizzju ta' dawn il-libertajiet, billi jgib mieghu dmirijiet u responsabbiltajiet, jista' jkunu suggett*

*ghal dawk il-formalitajiet, kundizzjonijiet, restrizzjonijiet jew penali kif preskritti b'ligi u li jkunu mehtiega f'socjetà demokratika, fl-interessi tas-sigurtà nazzjonali, integrità territorjali jew sigurtà pubblika, biex jigi evitat id-dizordni jew l-eghmil ta' delitti, ghall-protezzjoni tas-sahha jew tal-morali, ghall-protezzjoni tar-reputazzjoni jew drittijiet ta' haddiehor, biex jigi evitat il-kxif ta' informazzjoni ricevuta b'sigriet, jew biex tigi mizmuma l-awtorità u l-imparzjalità tal-gudikatura.*

Ghal din id-disposizzjoni ghamlet enfasi id-difensur tar-rikorrenti fis-sottomissjonijiet finali taghha.

Sostanzjalment id-disposizzjonijiet fuq citati jittutelaw dan id-dritt fundamental tal-liberta` tal-espressjoni. Dan id-dritt jinkludi d-dritt li wiehed ikollu opinjoni u li jaghti informazzjoni dwar dik l-opinjoni tieghu minghajr ma jkun hemm indhil mill-awtorita` pubblika. Ghalhekk hadd ma ghandu jigi mfixkel fit-tgawdija ta` dan id-dritt fundamentali. Fl-istess waqt dan id-dritt huwa suggett ghal xi kundizzjonijiet jew restrizzjonijiet kif provdut f'xi ligi pero` dana skond dak li hu ragjonevoli u skond kif mehtieg f'socjeta` demokratika.

Ghall-fini tal-mertu tal-kawza tal-lum, kif del resto ghamlet fil-kaz tal-Art.41 tal-Kostituzzjoni, din il-Qorti tghid li dak li jrid ikun stabbilit huwa jekk l-intervent tal-Awtorita` tax-Xandir kienx legittimu inkella le ghall-fini tas-subinciz (2) u allura minghajr ebda ksur tas-subinciz (1) ghaliex l-ewwel subinciz huwa soggett ghal dawk il-formalitajiet, kundizzjonijiet, restrizzjonijiet jew penali kif preskritti b'ligi u li jkunu mehtiega f'socjetà demokratika …ghall-protezzjoni tar-reputazzjoni jew drittijiet ta' haddiehor …

Fil-pagna 444 tal- ktieb *Law of the European Convention on Human Rights* (Second Edition – Oxford University Press) ighidu Harris, O`Boyle & Warbrick dwar l-interferenza mill-Istat ghall-ezercizzju tad-dritt tal-liberta`

tal-espressjoni hija kwalifikata bl-Art.10(2) skond tliet rekwiziti : (i) whether *an impugned measure is prescribed by law* (ii) *whether it pursues a legitimate aim and* (iii) *whether it is necessary in a democratic society*.

*The first standard 'prescribed by law' is essentially the legal basis test requiring the state authorities to identify the national law that provides the basis for restricting a person`s right under Article 10. The second requirement of 'legitimate aim' has rarely generated substantive discussion in the case law. The Court`s analysis generally focuses instead on the third standard which constitutes the most demanding litmus test for the Court and litigants alike. The Court has taken the phrase 'necessary in a democratic society' as supposing 'a pressing social need' which can be met by a restriction that strikes a fair or porportionate balance between the means to satisfy it and the individual`s freedom of expression. The national authorities are given a margin of appreciation in assessing the existence of such a social need and choosing the measures to be taken to deal with it. The State nonetheless does not have an unlimited power of appreciation ; instead the Court retains the competence to decide whether the national authorities have adduced both 'relevant and sufficient reasons' to justify its measures of interference.*

Fil-pagna 801-802 tal-ktieb *Theory and Practice of the European Convention on Human Rights* (Fourth Edition – Intersentia) l-awturi Van Dijk, Van Hoof, Van Rijn, u Zwaak ighidu hekk -

*It is clear from the text of the second paragraph of Art.10 that everyone – including artists and those who promote their work – who exercises the right contained in the first paragraph bears 'duties and responsibilities'. Those words imply the possibility to differentiate, in assessing the necessity of restricting the freedom of expression, according to 'the particular situation of the person exercising freedom of expression and the duties and responsibilities attaching to that situation'. For the*

*person concerned that special responsibility may lead to a broader or a narrower interpretation of the possibilities to restrict his freedom of expression.*

**Ikkunsidrat :**

**VIII. <u>Qorti Ewropeja tad-Drittijiet tal-Bniedem - Jerusalem v. Austria deciza fis-27 ta` Frar 2001 Steel and Morris v. United Kingdom tal-15 ta` Frar 2005</u>**

In sostenn tat-tezi tar-rikorrenti li s-subinciz (2) ma jistax jigi invokat bhala interferenza legittima fil-kawza tal-lum, id-difensur taghhom iccitat favur ir-rikorrenti d-decizjonijiet moghtija mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kawzi *Jerusalem v. Austria* deciza fis-27 ta` Frar 2001 u *Steel and Morris v. United Kingdom* tal-15 ta` Frar 2005

Din il-Qorti qieset b`reqqa z-zewg pronunzjamenti, u qabel ma taghmel l-osservazzjonijiet taghha, sejra tirreferi ghall-fatti taz-zewg kawzi kif dawn kienu spjegati fid-dottrina.

Dwar *Jerusalem v. Austria*, fil-pagna 647 tal-ktieb ta` Alastair Mowbray *Cases and Materials on the European Convention on Human Rights* (Second Edition – Oxford University Press) jinghad hekk –

*The Court has stated that special protection should be afforded to political expression taking place within public representative democratic institutions. The applicant in "Jerusalem v. Austria", judgement of the 27 February 2001, was a member of the Vienna Municipal Council (which also acted as the Regional Parliament). During the debateon sects she expressed the view that a specified organisation was a sect. Later that organisation*

*obtained an injuction preventing her from repeating the statement. When examining her complaint that the injunction violated her freedom of expression the Court unanimously held that :*

*"As regards the impugned statements of the applicant, the Court observes that they were made in the course of a political debate within the Vienna Municipal Council. It is not decisive that this debate occurred before the Vienna Munbcipal Council sitting as the local council and not as the* Land *Parlament. Irrespective of whether the applicant`s statements were covered by parliamentary immunity, the Court finds that they were made in a forum which was at least compartable to Parliament as concerns the public interest in protecting the participants` freedom of public expression. In a democracy, Parliament or comparable bodies are the essential for a for political debate. Very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein"*

*The Court went on to find out that as the Austrian Courts had required the applicant to prove the truth of her statements and, at the same time, denied her the opportuinity to produce evidence to support her words she had suffered a breach of Article 10.*

Dwar l-istess decizjoni Harris, O'Boyle & Warbrick f`pagna 504 tal-ktieb *Law of the European Convention on Human Rights* (Second Edition – Oxford University Press) jaghmlu dan il-kumment –

*In Jerusalem, where a local politician remarked that sects shared totalitarian character and fascist tendencies, Austrian Courts found her remark to be a statement of fact which was not proven true and so amounted to defemation. In contrast, the Court* (ECHR) *described it as a value-judegemnt and a fair comment on matters of public interest not requiring proof of its truth.*

Dwar *Steel and Morris v. United Kingdom*, Harris, O'Boyle & Warbrick f`pagna 507 tal-ktieb *Law of the European Convention on Human Rights* (Second Edition – Oxford University Press) ighidu hekk –

*As stated in Steel and Morris v. UK, it is 'not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements', namely that the statement is substantially true on the balance of probabilities'. Nevertheless, as examined in the context of 'duties and responsabilities', they are not required to establish the truth of all aspects of information they use in the press.*

Fil-pagna 510 tal-istess ktieb dwar il-fatti tal-istess decizjoni nghad hekk –

*… two compaigners of London Greenpeace, who distributed leaflets containing serious allegations against McDonalds's, ended up in defending themselves against the mightly multinational in defamation proceedings. The absence of legal aid for defamation resulted in a gross inequality of arms, disabling them from carrying out an effective defence of the case. This, together with the possiblechilling effect that the substantial sum of damages awarded against them would have on their right to freely circulate information of public interest, led the Court to find a violation of Article 10. It is not however clear whether if given sufficient legal aid, the applicants could have successfully established the veracity of their allegations that the Court classified as factual statements, such as their contention that McDonald`s was accountabele for health, environment and labour problems. Nevetheless sucha question was immaterial for the Court`s examination that spotlighted the disproportionate impact of unfair proceedings on the applicant`s free speech …*

Li certament hareg miz-zewg sentenzi huwa li *as politicians who must display a greater degree of tolerance*

*because they enter the public arena voluntarily, private individuals or associations also expose themselves to scruinty when they enter the arena of public debate* kif ukoll li *in a democratic society even small and informal campaign groups may claim this protection, because they must be able to carry out their activities effectively and because there is a strong public interest in enabling such groups or individuals outside the mainstream to contribute to the public debate*. (Pagna 798-799 - *Theory and Practice of the European Convention on Human Rights* (Fourth Edition – Intersentia) - Van Dijk, Van Hoof, Van Rijn, u Zwaak).

Ghal din il-Qorti, il-fattispeci izda anke l-principji li hargu miz-zewg sentenzi huma differenti u distakkati ghal kollox mill-fatti tal-kawza tal-lum u ghalhekk jekk applikabbli fil-kuntest ta` cirkostanzi simili mhumiex estendibbli b`analogija ghall-kaz tal-lum fejn il-punt krucjali jibqa` li r-rikorrenti mexxew bl-ispots fejn deher Mons Vella, biex jsostnu l-posizzjoni referendarja taghhom, imbaghad minghajr il-kunsens tieghu, u meta kien messhom jafu li l-posizzjoni ta` Mons Vella dwar is-suggett ma kenitx dritta jew semplicistika izda artikolata u komplessa u ma kenitx sejra tingabar f`temp ta` ftit sekondi. U ghalhekk bit-twaqqif tal-ispots mill-Awtorita` tax-Xandir ma saret l-ebda lezjoni tad-dritt tal-liberta` tal-espressjoni tar-rikorrenti. Kien att legittimu ta` awtorita` pubblika li nterveniet ghaliex hekk kien dmir u obbligu taghha li taghmel ben accertat il-fatt illi tat lir-rikorrenti kull opportunita` li tissostitwixxi l-ispots imwaqqfa b`ohrajn kif fil-fatt sar.

**<u>Ikkunsidrat :</u>**

## IX. <u>Konsiderazzjonijiet finali</u>

<u>In linea generali</u>, ighidu Harris, O`Boyle & Warbrick f`pagna 465 tal-ktieb *Law of the European Convention on*

*Human Rights* (Second Edition – Oxford University Press) :

*The Court has repeatedly emphasised that Article 10 safeguards not only the substance and contents of information and ideas, but also the means of trasmitting it.*

Fil-pagna 469 jinghad ukoll li :

*Despite the relatively generous latitudes of national discretion over policy choices that have been allowed, the development of the case law suggests that the Court has gradually intensified the standard of reviewing the content of proposed broatcasting. The Court`s decison-making policy is no doubt prompted by the role of the media in shaping the informed and critical public through the 'free flow of information' and contributing to 'open and free debate' in democracy.*

F`pagna 257 ta` *A Practitioners`s Guide to the European Convention on Human Rights* (Third Edition - Thomson – Sweet & Maxwell) Karen Reid tghid li -

*Very strong reasons are required to justify restrictions on political speech in particular and those participating in public debate, such as activist groups may claim a high level of protection. The Court distinguishes between factual assertions and value judgements ...*

F`pagna 793 ta` *Theory and Practice of the European Convention on Human Rights* (Fourth Edition – Intersentia), Van Dijk, Van Hoof, Van Rijn, Zwaak ighidu hekk -

*The Court has taken the position that the exceptions to the freedom of expression must be narrowly interpreted and the necessity for any restrictions must be convincingly established ...*

*The strict supervision of preventive restraints is also reflected in those cases where the Court held that the intended purpose of the ban on publication, the prevention of the disclosure of information could no longer justify the prohibition because the information had already become public on the basis of another source ...*

U fil-pagna 794-795 qalu hekk -

*According to the Court, in assessing whether there is a pressing social need capable of justifying interference with the exercise of the freedom of expression, a careful distinction needs to be made between facts and value judgements because "The existence of facts can be demonstrated whereas the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgement is impossible to fulfil and fringe freedom of opinion itself, which is a fundamental part of the right secured by Article 10 ...*

*Moreover 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.*

Din il-Qorti tghid li <u>in linea ta` principju</u>, ir-rikorrenti ghandhom il-jedd li jaghtu informazzjoni lill-pubbliku dwar ghaliex ghandu jkun vot favur l-IVA fir-referendum ta` nhar is-Sibt li gej minghajr ma jkun hemm indhil indebitu mill-awtorita` pubblika.

Fl-istess waqt din il-Qorti ma tistax twarrab fil-genb u tinjora ghal kollox il-fehma ta` min intuza ghall-propaganda tar-rikorrenti minghajr il-kunsens jew l-adezjoni tieghu.

U din il-Qorti ma tistax tqis bhala tfixkil jew interferenza fit-tgawdija ta' dak id-dritt fundamentali tar-

rikorrenti l-fatt li l-Awtorita` tax-Xandir waqfet ix-xandir taz-zewg spots in kwistjoni ghax min kien qieghed riportat bil-kliem u bl-immagini tal-ispots u cioe` Mons Vella kien oggezzjona ghal- aktar xandir ta` l-istess.

Din il-Qorti tirribadixxi li l-Awtorita` tax-Xandir agixxiet b`mod ragjonevoli u *intra vires* meta, wara li ddecidiet li twaqqaf dawk l-ispots, tat lir-rikorrenti l-opportunita` li tipprezenta spots ohra alternattivi sabiex jixxandru fil-pront. Fil-fatt irrizulta li r-rikorrenti pprezentaw l-ispots alternattivi. Hekk kien mehtieg u sar ghax din hija socjeta` demokratika.

Fil-kaz tal-lum, ma jirrizultax li Mons. Vella rtira virgola minn dak li tkellem dwaru fil-programm “Bla Agenda” tas-6 ta` Marzu 2010 kif del resto baqghu dawk li kienu l-kitbiet tieghu dwar is-suggett.

Ghandu jinghad li l-intervent ta` Mons. Vella sehh <u>qabel</u> l-Onor. Dr. Jeffrey Pullicino Orlando ipprezenta l-*Private Members` Bill* tieghu, <u>qabel</u> thabbret id-data tar-referendum u <u>qabel</u> kien kostitwit il-Moviment tal-IVA.

Mela dak li stqarr Mons. Vella fi “Bla Agenda” kien l-ghoti tal-veduti tieghu fil-pubbliku izda ma jistax jitqies bhala appogg lejn moviment kontra iehor bil-konsegwenza li l-Moviment tal-IVA ma setax jislet parti anke jekk mhux *doctored* ta` dak li kien stqarr Mons. Vella fi “Bla Agenda” bhala mizura ta` propaganda tal-istanza tal-Moviment tal-IVA minghajr il-kunsens tal-istess Mons. Vella.

Il-kritika li din il-Qorti tghid li ghandha taghmel fil-konfront tal-Awtorita` tax-Xandir hija li ladarba fil-mument tal-prezentata tal-ispots ir-rikorrenti ma kienux zgurawha li kellhom il-kunsens ta` Mons Vella kien messha interveniet fil-pront u ma hallietx l-ispots jixxandru tenut kont tar-

regoli jew direttivi taghha stess, kif ukoll tal-fatt li ufficjali taghha kienu raw l-ispots.

Din il-Qorti tghid li l-projbizzjoni tax-xandir tal-ispots ma tammontax ghal interferenza llegittima jew tfixkil fil-liberta` ta` espressjoni tar-rikorrenti.

**Ghar-ragunijiet kollha premessi, din il-Qorti qeghda taqta` u tiddeciedi l-kawza hekk –**

**1) Tilqa` l-eccezzjonijiet l-ohra tal-Awtorita` intimata, stante li l-ewwel eccezzjoni u cioe` dik preliminari tal-Awtorita` intimata kienet deciza minn din il-Qorti fid-19 ta` Mejju 2011 kontra l-Awtorita` intimata, bl-ispejjez ghall-istess Awtorita` intimata.**

**2) Tichad it-talbiet tar-rikorrenti.**

**3) B`applikazzjoni tal-Art. 223(3) tal-Kap.12 tal-Ligijiet ta` Malta, tordna li r-rikorrenti u l-Awtorita` intimata ghandhom ihallsu l-ispejjez l-ohra taghhom.**

**4) Tordna li l-intervenut fil-kawza jhallas l-ispejjez tieghu.**

**< Sentenza Finali >**

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