



## **QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.  
FRANCESCO DEPASQUALE**

Seduta tat-30 ta' Settembru, 2013

Avviz Numru. 260/2007

**Dr Tonio Borg  
vs  
Frans Ghirxi u Malta Labour Party, isimha  
mibdul ghal Partit Laburista permezz ta' digriet  
datat 3 ta' Novembru 2010**

Illum 30 ta' Settembru 2013

Il-Qorti,

Rat ir-rikors ippresentat fit-23 ta' Awissu 2007 fejn ir-rikorrent ghamel referenza ghall riklam mahrug mill-Malta Labour Party fit 22 ta' Awissu 2007 fuq il-harga tal-Orizzont datata 22 ta' Awissu 2007, liema riklam kien intitolat "Kumpens ta' Kwazi Lm70,000". Ir-rikorrenti jikkontendi illi tali riklam huwa libelluz u malafamanti fil-konfront tieghu u ghalhekk talab lill Qorti sabiex tiddikjarah bhala tali u tikkundannahom ihallsuh danni ai termin tal-Kap 248.

Rat in-nota ta' eccezzjonijiet ippresentata fis 17 ta' Settembru 2007 ta' Frans Ghirxi illi laqa' ghal dak lillu attribwit billi qal li kull ma ghamel kien li wassal lill-

pubbliku tgharif ta' interess li kienu l-veduti tal-Malta Labour Party, u tali kitba kienet fatti li, filwaqt li tista taqbel jew ma taqbilx, jikkostitwixxu 'value judgment'.

Rat in-nota ta' eccezzjonijiet ippresentata fit 28 ta' Settembru 2007 tal-Malta Labour Party fejn laqa ghal dak lilha attribwit billi sahqet li ma kien hemm xejn libelluz f'dak li inkiteb u kien jikkonsisti f'fair comment' fuq materja ta' interess pubbliku.

Rat ix-xhieda ta' **John Sciberras**, Direttur Generali tat-Taqsima Propjeta' tal-Gvern moghtija fit 22 ta' Jannar 2008 u fis 6 ta' Frar 2008 flimkien ma' dokumentazzjoni varja da parte tieghu sabeix jissustanzja x-xhieda tieghu.

Rat ix-xhieda tar-rikorrent **Dr Tonio Borg** moghtija fid 9 ta' April 2008.

Rat illi fis 6 ta' Novembru 2008, r-rikorrent iddikjara illi ma kellux aktar provi.

Rat ix-xhieda ta' **Frans Ghirxi** moghtija fl 10 ta' Gunju 2009 u fis 16 ta' Frar 2011.

Rat illi mill-10 ta' Gunju 2009 sat 12 ta' Lulju 2012, saru tmien seduti ikkaratterizzati f'talbiet ta' differiment da' parte tal-intimat jew ghax indispost jew inkella ghax il l-partijiet kienu qed jippruvaw jittransigu l-kaz.

Rat illi wara li l-intimati hlew aktar minn tlett snin, il-Qorti iddikjarat il-provi kollha intimat bhala maghluqa u differit il-kawza ghal-lum ghas-sentenza finali.

### **Ikkunsidrat**

Illi l-kawza odjerna tirrigwarda riklam illi l-Partit Laburista, dak iz-zmien Malta Labour Party, ippubblika fuq folja shiha tal-pagna 12 tal-gazzetta l-Orizzont, li taghha Ghirxi kien l-editur, tal-harga tat-22 ta' Awissu 2007, liema riklam kien jinkludi, fuq naha wahda ritratt tar-rikorrent jidhaq u tahtu ritratt ta' Ninu Zammit, dak iz-zmien Ministru tal-Gvern Nazzjonalista, bhalma kien ukoll ir-rikorrent, filwaqt illi fuq naha l-ohra kien hemm storja ippubblikata mill-Ufficju Informazzjoni tal-Partit Laburista.

Illi l-istorja kienet intitolata "**Kumpens ta' kwazi Lm70,000 - Ninu Zammit jinghata kumpens taht procedura li ma kienetx tapplika ghalih**". L-Artikolu imbghad, taht, jikkwota kliem li qal ir-rikorrent u, go kaxxa separata, taht il-kliem '**Skond Tonio Borg ma saret ebda preferenza ma' Ninu Zammit**' jigi kkwotat l-istess rikorrent fejn

jinghad li qal *"Ma saret l-ebda preferenza mal-Ministru Ninu Zammit. Il-problemi li ghadna mhix ma dawk li ttiehditilhom il-propjeta' ricentament, izda ma dawk ta' l-antik. Dawk li bhall-Ministru Zammit l-art taghhom giet espropriata f'dawn l-ahhar seba' jew tmien snin, kollha gew trattatati l-istess."*

Wara tali kwotazzjoni, taht it-titolu **'Il-fatti'**, l-artikolu jkompli jghid is-segwenti: *"Il-Ministru Ninu Zammit ircieva kumpens ta' kwazi Lm70,000 ghal bicejn art, id-daqs ta' bankina kbira, li ttiehdulu biex setghet titwessa t-triq fejn l-istess ministru ghandu l-villa tieghu. Ninu Zammit ircieva dal-kumpens taht procedura li bdiet tapplika fl 1993 u li saret parti mill-Ligi fil 2002. Ma dan kollu, kien l-istess Ministru innifsu li kkonferma li l-gvern hadlu l-bicejn art bejn 1987 u 1989, mal 5 snin shah qabel ma bdiet tapplika din il-procedura. Ghalhekk, bil-kuntrarju ta' dak li qal Tonio Borg, mhux minnu li l-art ta' Ninu Zammit ghaddiet ghand il-gvern f'dawn l-ahhar seba' jew tmien snin, izda fil-fatt dan gara bejn tmintax u ghoxrin sena ilu. Jigifieri l-kaz ta' Ninu Zammit jaqa' mal-kazi ta' lantik li, fi kliem Tonio Borg, dwarhom il-gvern suppost ghandu l-problemi."*

L-artikolu imbghad, jghid, f'kaxxa apposita, **"Ghal Ninu Zammit izda ma kien hemm ebda problemi biex inghata kwazi Lm70,000"** u jghalaq billi jghid, fi kliem kbar u f'kaxxa ohra **"Min huwa mejjet fis-sakra u min huwa mejjet ghall-qatra"**.

### **Ikkunsidrat**

Illi mix-xhieda tad-Direttur Generali tat-Taqsima Propjeta tal-Gvern, ossija il-Perit John Sciberras, jirrizulta illi qabel is-sena 1993, kull meta xi dipartiment governattiv jew entita' pubblika ried jaghmel xi talba ghall-esproprijazzjoni, huwa kien jinforma lid-Dipartiment tat-Tmexxija ta' l-Artijiet fi hdan id-dipartiment tieghu illi kienet thejji il-pjanti u tivvaluta l-propjeta. Sussegwentement, dana id-Dipartiment ta' l-Artijiet kien jikteb lill min ried jespropriha dina l-art u jgharrfu bil-valur tieghu u, f'kaz illi l-esproprijazzjoni xorta kienet mehtiega, id-Dipartiment tal-Artijiet kien jiehu hsieb illi tinhareg id-Dikjarazzjoni tal-president ta' Malta illi tesproprija l-art.

Jirrizulta illi, wara 1993, filwaqt illi l-process baqa' l-istess, inbidlet il-policy adoperata mid-Dipartiment tal-Artijiet fis-sens illi, meta xi entita' tkun trid tesproprija xi bicca art, qabel ma jinbdew il-proceduri mal-President ta' Malta, tali entita' jew dipartiment kellu jiddeposita l-valur ta' l-art illi kienet ser tigi espropriata mad-Dipartiment ta' l-Artijiet. Tali policy kienet dovuta ghal fatt illi kien hemm hafna esproprijazzjonijiet li kienu saru fis-snin ta' qabel illi ghalhom ma kienx hemm flus, u ghalhekk kien ikun difficili illi jsir il-hlas meta mitlub mis-sid. B'rizultat ta' tali policy, kull esproprijazzjoni illi saret wara is-sena 1993 kellha mal-ewwel il-flus allokati ghalha b'mod illi meta wiehed japplika ghal kumpens, jinghata l-kumpens kalkolat mid-Dipartiment fi zmien qasir. Eventwalment tali policy giet imdahhla fil-Kap 88 tal-Ligijiet ta' Malta fit-2003. Dwar il-kaz relatat ma' propjeta espropriata lill Ninu Zammit u l-kumpens illi inghata jirrizulta, dejjem mix-xhieda ta' l-istess Sciberras, li fil-21 ta' Frar 2006, l-Awtorita' Dwar it-Trasport ta' Malta baghtet ittra lid-Dipartiment tal-Artijiet fejn gharrafitha li riedet tesproprija biccetejn art gewwa z-Zurrieq illi hija kienet hadet fil-pussess taghha fis-sena 1989 - dawna kienu l-artijiet ta' Ninu Zammit. Meta d-Dipartiment ircieva tali talba, adopera l-process li kien hemm vigenti, jigifieri dak ta' wara 1993, u, filwaqt li vvaluta l-artijiet in kwistjoni permezz ta' perit fid 19 ta' Gunju 2006, liema valutazzjoni kienu ta' Lm23,808 u Lm20,272 rispettivament, jigifieri total ta' Lm44,080, ghadha biex isir id-Dikjarazzjoni tal-President ta' Malta, liema dikjarazzjoni saret fit 30 ta' Jannar 2007. Il-flejjes kif stmati mill-Perit imqabbad mill-Gvern gew depositati u, eventwalment, wara prova da' parte ta' Ninu Zammit illi huwa kien is-sid, sar il-kuntratt finali.

### **Ikkunsidrat**

Illi da parte tal-intimati, apparti differimenti varji biex jilhqu transazzjoni, l-unika prova illi huwa tellghu kienet ix-xhieda ta' Frans Ghirxi, illi kien l-editur dak iz-zmien tal-gazzetta l-Orizzont. Is-sur Ghirxi, fix-xhieda tieghu, stqarr illi huwa ma kienx ghamel verifika tal-fatti qabel ma ppubblika l-avviz u, filwaqt illi strah fuq dak li kien sema li ntqal fil-pubbliku dwar dana il-kaz, huwa kull ma ghamel

kien illi rriproduca l-avviz illi baghtulu mill-Malta Labour Party u ma miss xejn minnu.

### **Ikkunsidrat**

Illi, fil kaz odjern, l-intimat Frans Ghirxi, fl-eccezzjonjiet tieghu, stqarr illi dak illi huwa ghamel fl-avviz kien biss 'value judgment' tal-fatti kollha u ghalhekk ma kellux jinstab resposabbli talli llibella lir-rikorrent. L-intimata Malta Labour Party, sussegwentement imsemmija Partit Laburista, stqarret illi l-pubblikazzjoni taghha kien biss 'fair comment' fuq materja ta' interess pubbliku u ghalhekk ma kellhux jitqies bhala libelluz.

### **Ikkunsidrat**

Fl-ktieb **Gatley on Libel and Slander** (Sweet & Maxwell (London), 1981 jinghad hekk dwar in-natura ta' kumment:

*A comment is a statement of opinion on facts. It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say that he did the act so criticised. "A libellous statement of fact is not a comment or criticism on any thing". But while a comment is usually a statement of opinion as to the merits or demerits of conduct, an inference of fact may also be a comment. There are, in the cases, no clear definitions of what is comment. If a statement appears to be one of opinion or conclusion, it is capable of being comment. (para. 697, pagna 294).*

Fil-kawza **Brent Walker Group plc v Time Out Ltd** [1991] 2 QB 33 deciza mill-Qorti tal-Appell Ingliza, il-bazi tal 'fair comment' giet kunsidrata minn Bingham LJ li dwarha qal is-segwent:-

*"The civil law of libel is primarily concerned to provide redress for those who are the subject of false and defamatory factual publications. Thus in the simplest case A will be entitled to relief against B if B publishes a defamatory factual statement concerning A which B cannot show to be true. The law is not primarily concerned to provide redress for those who are the subject of disparaging expressions of opinion, and freedom of opinion is (subject to necessary restrictions) a basic democratic right. It is, however, plain that certain*

*statements which might on their face appear to be expressions of opinion (as where, for example, a person is described as untrustworthy, unprincipled, lascivious or cruel) contain within themselves defamatory suggestions of a factual nature. Thus the law has developed the rule already mentioned that comment may only be defended as fair if it is comment on facts (meaning true facts) stated or sufficiently indicated. Failing that, the comment itself must be justified."*

Fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, Lord Phillips ghamel 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.*

Kif kompli jghid l-istess Lord Phillips fl-ezami tieghu tal-posizzjoni mehudha mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem, huwa stqarr is-segwenti

*76. The relevant principles are helpfully summarised at paras 28 and 29 of *Sorguc v Turkey* (Application No 17089/03) (unreported) given 23 June 2009. Freedom of speech may be restricted in order to protect reputation where this is necessary in a democratic society to meet a*

*pressing social need. Thus a test of proportionality has to be applied. In applying that test there is a significant distinction between a statement of fact and a value judgment. A statement of fact will be true or untrue and the law can properly place restrictions on making statements of fact that are untrue. A value judgment is not susceptible of proof so that a requirement to prove the truth of a value judgment is impossible to fulfil, and thus infringes article 10.*

*“However, 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 – Jerusalem v Austria (2003) 37 EHRR 567, para 43.”*

*In Lindon. Otchakovsky-Laurens and July v France (2007) 46 EHRR 761 the Grand Chamber went further, stating at para 55:*

*“The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive.”*

*77. In Nilsen and Johnsen v Norway (1999) 30 EHRR 878, para 50 the court equated the imputation of improper motives or intentions with value judgments rather than statements of fact, having regard to the fact that from the wording of the statements and their context it was apparent that they were intended to convey the applicants' own opinions.*

*78. The Strasbourg Court also attaches importance to the extent to which the subject of a publication is a matter of public interest. The limits of acceptable criticism are wider in relation to politicians acting in their public capacity than in relation to private individuals – Jerusalem v Austria (2001) 37 EHRR 567, para 38. In Hrico v Slovakia (2004)*

*41 EHRR 300, para 40g the court observed that there was little scope under article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest.*

### **Ikkunsidrat**

Tenut kont tal-veduti kif enuncjati minn Qrati li fuqhom dawna il-Qrati regolarment jaghmlu referenza u bazi, il-Qorti thoss illi jkun opportun illi jigi ezaminati l-hames elementi imsemmija minn Lord Philips sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

(i) *"the words complained of were comment"* - ma hemmx dubju illi l-kliem li intuzaw kienu kumment dwar dak li kien qieghed jigri, ghalkemm kien parti minn riklam tal-Partit Laburista.

(ii) *"the comment was on facts"* - jidher, mill-fatt kif prodotti, illi ghalkemm huwa minnu li l-kumment illi sar kie ibbazat fuq fatti illi kienu sehew, jidher illi tali fatti ma kienux kompleti bir-rizultat illi taw stampa mhux kompleta tal-kwistjoni kollha illi kien qed isir l-avviz dwaru. Di fatti, hareg car mill-provi kollha prodotti illi, ghalkemm l-intimati saħqu illi Ninu Zammit inghata kumpens taht procedura li ma kienetx tapplika ghalih, dana di fatti ma kienx minnu peress illi l-procedura ta' esproprijazzjoni inbdiet fis-sena 2006 u ghalhekk kien japplika ghalha r-regim il-gdid stabbilit, bhala policy, fis-sena 1993, u bhala ligi fis-sena 2002.

(iii) *"the facts commented on constituted a matter of public interest"* - ma hemmx dubju illi l-fatt li jsir hlas ghal art illi giet esproprijata minn Gvern ghal uzu pubbliku, minnha innifisha, tikkostitwixxi kwistjoni ta' interess pubbliku. Tali interess, naturalment, jizdied in vista tal fatt illi l-art li giet esproprijata u li taghha kien qieghed isir il-hlas kien ta' Ministru li kien fil-Gvern meta sar il-hlas.

(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;"* - in vista ta' dak gia stabbilit fuq it-tieni kriterju, peress illi l-fatti kif stabbiliti ma kienux korretti u kien jaghtu stampa mhux kompleta tal-



kaz kollu, allura wiehed ma jistax jikkonkludi li tali kumment kien oggettivament 'fair comment', peress illi l-bazi tieghu kien monk.

(v) *"the comment represented the defendant's honest opinion."* - bhalma saħqu kemm il-Qorti tal-Appell Ingliza kif ukoll il-House of Lords, ma kienx obbligu tal-intimat illi jipprova li ma kellux malizia fil-kumment tieghu.

Kif stqarr Lord Nichols fil-kawza **Cheng** [2001] EMLR 777

*"Proof of malice is the means whereby a plaintiff can defeat a defence of fair comment where a defendant is abusing the defence. Abuse consists of using the defence for a purpose other than that for which it exists. The purpose for which the defence of fair comment exists is to facilitate freedom of expression by commenting on matters of public interest. This accords with the constitutional guarantee of freedom of expression. And it is in the public interest that everyone should be free to express his own, honestly held views on such matters, subject always to the safeguards provided by the objective limits mentioned above. These safeguards ensure that defamatory comments can be seen for what they are, namely, comments as distinct from statements of fact. They also ensure that those reading the comments have the material enabling them to make up their own minds on whether they agree or disagree."*

Issa, fil-kaz odjern, jidher car illi lill qarrej ma inghatalux materjal sufficjenti sabiex jasal konkluzjoni onesta u indipendenti, u dana qieghed jinghax ghax hareg car mill-fatti kif proposti, illi ma kienx minnu li Ninu Zammit **"inghata kumpens taht procedura li ma kienx japplika ghalih"** kif allegaw l-intimati. Illi ghalhekk, l-intimati ma kienux onesti fil-kumment taghom u ghalhekk, ghandhom ikunu responsabbli tal-konsegwenzi ta' tali nuqqas ta' onesta.

Del resto, il-Qorti ma tistax ma tinnutax illi, kif stqarr ben tajjeb Lord Phillips fil-kawza fuq kwotata

*"The defence of fair comment should be renamed "honest comment"."*

Fil-kaz odjern, jidher car illi tali kumment la kien onest u lanqas kien gust fil-konfront tar-rikorrent u ghalhekk ghandu jigi penalizzat minn dina l-Qorti

### **Ikkunsidrat**

Illi, tenut kont ta' dak fuq stipulat, il-Qorti ghandha tikkunsidra id-danni li ghandha takkorda lir-rikorrent.

L-ewwel u qabel kollox, ghandu jigi osservat illi r-rikorrent kien Membru tal-Parliament, u kwantu hekk, il-livell ta' kritika lejha jista jkun ferm oghla. Il-Qorti thoss illi tali argumentazzjoni u konsiderazzjonijiet ghandu japplika wkoll meta wiehed jikkonsidra l-livell ta' kumpens dovut lejhom, peress illi, la darba il-livell tal-kritika ghandha tkun oghla, il-livell tad-danni subiti ghandha tkun anqas minn dik ta' persuna normali, peress illi, la darba dahlu fil-politika, huma jifhmu ukoll illi jkunu soggetti ghal tali attackki l-hin kollu.

Illi, apparti minn hekk, il-Qorti hija certa mill-fatt illi l-politiku jghozz ferm aktar id-decizjoni fuq il-punt tad-dritt milli dik fuq il-punt tad-danni, peress illi l-punt tad-dritt jeffettwa il-percezzjoni illi c-cittadin ikollu dwar ir-rikorrent fuq il-kwistjoni li giet deciza mill-Qorti filwaqt illi l-punt tad-danni jghaddi biex jrodd ammont ta' flus lir-rikorrent bhala flejjes minnha mitlufa rizultat tal-allegazzjonijiet foloz tal-intimat.

Illi mill-provi prodotti ma jidhirx illi r-rikorrent sofra xi telf ta' qliegh finanzjarji dovuti ghall-artikolu meritu tal-kawza odjerna, u ghalhekk il-Qorti ser ikollha tipprovdi dwarhom *animo boni viri*. Madanakollu, l-mod kif l-artikolu ossija avviz gie impustat u l-lingwagg uzat fl-artikolu fil-konfront tar-rikorrenti huma tali illi l-Qorti ma tistax ma tikkunsidrahomx fl-ghoti tad-danni mitluba.

### **Konkluzjoni**

Il-Qorti,

Wara illi rat il-provi kollha prodotti

Tghaddi biex taqta u tiddeciedi billi

**Tichad** l-eccezzjonijiet tal-konvenuti Frans Ghirxi u Malta Labour Party, ossija Partit Laburista u

**Tilqa** t-talba attrici u **Tiddikjara** illi l-avviz ossija riklam mahrug mill-Malta Labour Party fit 22 ta' Awissu 2007 fuq il-harga tal-Orizzont datata 22 ta' Awissu 2007 intitolat

Kopja Informali ta' Sentenza

"Kumpens ta' Kwazi Lm70,000" huwa libelluz u malafamanti fil-konfront tar-rikorrenti u ghalhekk

**Tikkundanna** lill-intimati 'in solidum' ihallsu lir-rikorrent in linea ta' danni a tenur tal-Artikolu 28 tal-Kap 248 is-somma ta' hamest elef Euro (€5,000), bl-imghax dekoribbli mid-data tas-sentenza sad-data tal-pagament effettiv.

Spejjez ta' dawna l-proceduri jkunu kollha a kariku tal-intimati in solidum.

**< Sentenza Finali >**

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