



QORTI TAL-MAGISTRATI (MALTA)

**MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta tal-11 ta' Novembru, 2013

Avviz Numru. 81/2008

**Midi p.l.c. (C 15836)
vs
Dr Joseph sive Josie Muscat (ID 497043M)**

Illum 11 ta' Novembru 2013

Il-Qorti,

Rat ir-rikors ippresentat fl 20 ta' Frar 2008 fejn is-socjeta rikorrenti ghamlet referenza ghal diskors illi l-intimat ghamel fuq il-programm *Bondi+* imxandar fuq l-istazjoni PBS fl 4 ta' Frar 2008 u talbet lill-Qorti tiddikjara illi l-kliem li huwa qal kienu libelluzi u malafamanti fil-konfront tas-socjeta attrici u ghalhekk talbet lill-Qorti sabiex tikkundanna lill-istess intimat ihallasha danni bhala rizultat ta' tali fatt.

Rat ir-risposta ta' l-intimati ippresentat fil 5 ta' Mejju 2008 fejn huwa sahaq illi dak li qal ma kienx libelluz u tikkonsisti f'expressjoni ta' opinjoni u apprezzament jew value judgment kif ukoll kritika politika dwar l-amministrazzjoni

Kopja Informali ta' Sentenza

pubblika li hija, minnha innifisha, fair comment fuq materja ta' interess pubbliku.

Rat ix-xhieda ta' **Ben Muscat** moghtija fit 12 ta' Novembru 2008 flimkien ma' dokumentazzjoni minnu esebita kif ukoll dik moghtija fil 21 ta' Jannar 2009.

Rat ix-xhieda ta' **Albert Mizzi** moghtija fit 13 ta' Mejju 2009.

Rat ix-xhieda ta' **Luke Coppini** moghtija fl 24 ta' Gunju 2009.

Rat ix-xhieda, in kontro ezami, ta' **Ben Muscat** moghtija fl 24 ta' Gunju 2009.

Rat ix-xhieda in kontro ezami ta' **Albert Mizzi** moghtija fit 28 ta' Ottubru 2009.

Rat ix-xhieda ta' **Anglu Xuereb** moghtija fl-20 ta' Jannar 2010.

Semghet ix-xhieda, in kontro ezami, ta' **Anglu Xuereb**, moghtija fis 17 ta' Ottubru 2011 flimkien ma' dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **Dr Josie Muscat** moghtija fis-16 ta' Jannar 2012 u, in kontro ezami moghtija fis 27 ta' Frar 2012 flimkien ma' dokumentazzjoni minnu esebita.

Rat in-nota f'dokument ippresentat mill-intimat fit 12 ta' Lulju 2012 kif ukoll nota oħra b'dokument ossija artikolu iehor ippresentat fil 25 ta' Marzu 2012.

Rat in-nota ta' sottomissjonijiet tas-socjeta rikorrenti ippresentata fis 17 ta' Jannar 2013.

Rat in-nota ta' sottomissjonijiet ta' l-intimat ippresentat fit 23 ta' April 2013.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet moghtija fis 17 ta' Gunju 2013, wara liema data il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Il-kawza odjerna tikkoncerna kummenti illi l-intimat, dak izmien Kap tal-Partit Azzjoni Nazzjonali, kien ghamel fi programm televiziv imtella fl 4 ta' Frar 2008 fil-qalba ta' kampanja elettorali illi kienet qed twassal ghall-elezzjoni generali li saret fit 8 ta' Marzu 2008.

Waqt li kien qieghed jippartecipa f'programm televiziv fuq *Bondi+* fid-data indikata, l-intimati huwa rrapportat illi qal is-segwenti kliem illi huwa opportun illi jigu ripetuti ghal kompletezza tal-iter gudizzjarju. Dawna l-kliem kienu s-segwenti:

"Mur Tigne'. Tigne' ghalijja huwa l-aktar kaz ta' korruzzjoni lampanti. Il-ghala? Il-ghaliex meta dawn hargu t-tender ghal Tigne, dawn hargu biex jinbnew zewgt sulari u kull minn ittenderja, ittenderja ghal zewgt sulari. Allura kif issa f'daqqa wahda naraw li dawn baqghu telghin l-erbghatax-il sular? ... stenna stenna ... L-iskandlu huwa li meta dawna hadu dak il-kuntratt, barra li kellhom zewgt sularu biss, dawn kellhom jibnu yacht marina li ma saritx, kellhom jaghmlu break water li ma saritx, kellhom jirrangaw l-antikitajiet u t-toroq, li ma sarux, pero l-bini tela u ser jbieghuh u ara kemm, il-bambin jaf kemm ser jigbru dawna, ser idahhlu minnhom.

L-iskandlu l-iehor hu li meta z-zghazagh imorru beix jixtru dar, dawna iridu jissalbu mal-Bank ha jhallsu l-bolol u dan il-progett ta' Tugne kellhom ihallsu suppost 4.6 miljun f'bolol u ma hallsux one cent bolla."

Is-socjeta rikorrenti hasset illi tali kummenti kienu malafamanti fil-konfront taghha u ghalhekk ghamlet il-kawza odjerna peress illi intqalu fiz-zmien illi s-socjeta attrici kienet ser tohrog 'bond issue' u ghalhekk setghet tgerrex l-investituri.

Ikkunsidrat

Fix-xhieda tieghu, Ben Muscat, Chief Executive Office tas-socjeta rikorrenti, il ma kien involut f'ebda stadju tan-negozjati peress illi lahaq wara li gie ffirmat il-kuntratt mal-Gvern, stqarr illi s-sejha pubblika ghall-progett sar fis-sena 1992 u fis-sena 1994 intghazlet is-socjeta rikorrenti sabiex tibda negozzjati mal-Gvern, liema negozzjati damu ghaddejjin bejn is-sena 1994 sa 1998, li laqtu tlett amministrazzjonijiet differenti minn Partiti politici differenti, sabiex f'Lulju tas-sena 2000, gie finalizzat il-kuntratt tal-Gvern wara illi gie approvat unanimament mill-Kamra tar-Rappresentanti f'Novembru 1999.

B'referenza ghal varji allegazzjonijiet maghmulha mill-intimat, Muscat stqarr illi, dwar l-gholi tal-bini, ma kien hemm ebda limitu ta' zewgt sulari izda saru negozzjati bejn is-socjeta rikorrenti u l-Gvern li wasslu sabiex fis-sena 1999 il-MEPA tohrog outline development permit illi tipprovdi ghal binjiet ta' gholi ta' tmien sulari. Muscat stqarr ukoll illi, in vista tal-fatt li vicin il-propjeta taghhom, hemm binja li gia ghandha tmintax-il sular, huma kellhom pjanijiet sabiex itellghu binjiet erbghatax-il sular.

Fuq il-kwistjoni tal-breakwater, Muscat stqarr illi fis-sena 2003 ghamlu applikazzjoni sabiex jinbena tali breakwater u sa Novembru 2008, meta xehed Muscat, kienu ghadhom qed jistennew minghand l-MEPA dwar tali applikazzjoni. L-istess japplika wkoll ghal yacht marina illi dwarha saret applikazzjoni fis-sena 2006 u li kienet tiffirma parti mill-progett ta' Manoel Island u li dwarha kienu ghadhom qed jistennew minghand il-MEPA.

Dwar ir-restawr tal-bini antik, Muscat qal illi ir-restaur ta' Fort Manoel kien maqsum fuq medda ta' hames snin u tali restawr kien kwazi lest filwaqt illi l-istess japplika ghal Fort Tigne illi, fid-data li xehed Muscat, ix-xoghlijiet ta' restawr kienu kwazi kompletati. Fuq il-Lazzarett, Muscat stqarr illi fis-sena 2005 ippresentaw l-istudju taghhom lill-MEPA u ghadhom qed jistennew minghandhom.

Dwar it-toroq, Muscat qal li it-triq li kienet progettata u li kellha tghaddi taht il-kumpless kienet tlestiet f'April 2008 u kienet inghaddiet f'idejn l-awtoritajiet tal-Gvern. Finalment, dwar l-allegazzjoni ezenzjoni tal-hlas ta' bolla, Muscat stqarr illi filwaqt li kien minnu illi tali ezenzjoni tesisti, tali skema inghata mhux biss lis-socjeta rikorrenti izda wkoll lill-diversi progetti kbar ohra

Dwar il-progett kollu, Muscat sahaq illi originalment il-Gvern kien hareg kuncett u outline kif kellu jkun il-progett u kien biss wara illi l-MIDI gew maghzula illi bdew jigu negozjati kif kellu jkun il-progett. Huwa stqar illi originalment il-"garden battery" kienet ser titwaqqa u bini kien ser jittella hemmhekk izda, sussegwentement il-MEPA waqqfuhom milli jwaqqghu tali binja u ghalhekk kienu kostretti illi jghollu is-sulari tal-bini sabiex jikkumpensaw ghal tali telf ta' spazju. Bhala rizultat, Muscat stqarr illi bhala spazji aperti llum il-gurnata hemm aktar milli kien hemm indikat fl-outline permit.

Albert Mizzi, non executive Chairman tas-socjeta rikorrenti, stqarr illi huwa kien involut fin-negozjati kollha illi wasslu ghal konkluzjoni tal-ftehim, liema negozjati hadu tul ta' seba snin u involvew tlett Gvernijiet differenti u gie approvat mill-Parlament unanimament. Huwa ikkonferma dak li ntqal minn Ben Muscat, bhala CEO tas-socjeta rikorrenti, u stqarr illi fil-kuntratt li sar mal-Gvern hemm it-termini kollha illi gew lilha moghtija ghal konkluzjonijiet ta' varji fazijiet tax-xoghol. Huwa kkonferma illi bolol fuq il-bejgh ta' propjeta fil-kumpless ma jithallsux peress illi inghataw ezenzjoni minghand il-Gvern filwaqt illi stqarr li dwar l-appartamenti gewwa l-kumpless, kien hemm okkazzjonijiet li bieghuhom b'telf ghax kemm kien jaqbillhom.

Mizzi stqarr illi l-gholi tal-bini gie diskuss wara illi s-socjeta rikorrenti intghazlet u kien hemm certi postijiet fejn il-Gvern ikkonceda lis-socjeta rikorrenti jgholli l-bini aktar milli kien indikat fit-tender originali. Dana kien rizultat tal-fatt illi, skond Mizzi, wara illi inghataw it-tender, il-Gvern beda jinnegozja mas-socjeta rikorrenti u ghalhekk kellu

jintlahaq ftehim fuq kollox, u kien il-Gvern illi finalment accetta li jikkonkludi mas-socjeta rikorrenti.

L-intimat, bhala wiehed mix-xhieda tieghu, tella lill Anglu Xuereb, illi kien applika sabiex jintghazel ghal progett ta' Tigne izda li finalment gie skartat, li ppresenta quddiem il-Qorti id-Development Brief li kien hareg il-Gvern fis-sena 1992. Huwa stqarr illi skond tali brief, kellu jkun hemm ir-restorazzjoni tal-hames blokkok tal-barracks illi kien hemm u li l-bini ma kellhux ikun gholi aktar minn erbgha sulari sa sitt sulari f'parti minnha. Stqarr ukoll illi l-progett kellu jinkludi lukanda zghira u maggoranza kbira ta' ufficji b'numru zghir ta' appartamenti, jigifieri 200.

Xuereb stqarr ukoll illi fil-progett kif promoss mis-socjeta rikorrenti u li abbazi taghha intghazlet ghad-diskussjonijiet, is-socjeta rikorrenti kienet ikkommiet ruhha illi zomm il-barracks li kien hemm filwaqt illi tibni zewgt lukandi u Sala tal-konferenzi, lkoll ta' mhux aktar minn erbgha sulari, kif ukoll jibnu breakwater u yacht marina. Madanakollu, kif stqarr Xuereb stess, minn dana xejn ma sehh fil-kuntratt finali, peress illi s-sitwazzjoni illum il-gurnata turi stampa differenti. Di fatti, Xuereb jghid, skond reklam ta' l-istess socjeta rikorrenti, kien ser ikun hemm 450 appartament ghal bejgh u ma issemmiet ebda lukanda. Apparti minn hekk, harsa lejn il-bini tindika li l-binjiet telghu gholi ta' erbghatax-il sular.

Xuereb jallega wkoll illi, a differenza ta' dak li kien gie indikat fil-brief tal-Gvern fejn 25% tal-art kellha tigi zviluppata, madwar sebgħin fil-mija ta' l-art giet zviluppata kif ukoll sahaq illi originalment il-binja kellha tinbena bil-gebla tal-franka, attwalment inbniet kollha bil-konkos u totalment differenti mill-brief originali.

L-intimat Dr Josie Muscat, da parte tieghu, stqarr illi meta kien qed jaghmel il-kummenti li huma meritu tal-kawza odjerna, huwa kien qieghed jittellem bhala leader ta' partit politiku, ossija Azzjonali Nazzjonali, u kien qieghed jikkumenta dwar l-agir tal-Gvern fil-progett ta' Tigne. Di fatti, huwa stqarr li kien jippretendi illi l-brief originali li fuqu intghazlet is-socjeta rikorrenti tigi rispettata izda, bhala

fatt, dana ma garax, u il-progett inbidel radikalment. Huwa sahaq illi ma kien qieghed jaghmel ebda kumment b'referenza ghall MIDI izda kien qieghed jikkummenta dwar l-mod kif il-Gvern tal-gurnata mexxa id-diskussjonijiet tal-progett, liema tmexxija huwa iddifena bhala korrotta, mhux fis-sens finanzjarju izda fis-sens ta' tmexxija.

Ikkunsidrat

Fil-proceduri odjerni, s-socjeta rikorrenti esebit kopja ta' zewgt artikoli fejn is-socjeta rikorrenti cahdet l-allegazzjonijiet illi kien ghamel l-intimati flimkien ma' traskrizzjonijiet ta' varji programmi, fosthom il-programm fejn intqalu lkliem meritu tal-kawza odjerna, lkoll kliem illi qal l-intimat Dr Josie Muscat f'dibattiti televizivi.

L-intimat, da parte tieghu, esebixxa kopja tad-development brief illi kien ippublika il-Gvern u li abbazi tieghu is-socjeta rikorrenti inghata il-kuntrtat finali kif ukoll il-proposta ta' l-istess socjeta rikorrenti. Esebit ukoll diversi artikolu fejn, tul is-snin saru intervisti lill Albert Mizzi dwar il-progett ta' Tigne.

Fid-development brief, dwar l-area maghrufa bhala "Tigne Point", gie indikat is-segwenti mill-Gvern sabiex jigi kkunsidrat minn min kien interessat:

"The development of Tigne Point is intended as an extension of the existing urban area to the wist, with Tigne Fort being a magnet and attraction at the end of the peninsula. The height of the development will be treated more flexibly, provided the libe of the existing barracks along the southern shore is respected and the Fort incorporated successfully into the new development. The following building heights will be generally applied

Hotel Area - 2/3 floors

Feature Development Area - Up to 6 floors

General Development Area - 4 floors

Vertical Feature - dependnt on design."

Fil-proposal illi ghamlet is-socjeta rikorrenti u li wasslet biex tintghazel, is-socjeta rikorrenti qalet is-segweni dwar "*Tigne Point*"

"Tigne Point is suited for the development of service, commercial and residential complexes. For this reason, the project foresees the creation of a modern business, conference and recreational centre providing the following facilities: a modern conference complex consisting of a Conference Centre and a 5 star hotel with connected facilities (swimming pool, restaurant, boutiques, etc.) conceived as a distinctive element of Tigne Point; some historically important nineteenth century buildings such as Tigne Fort and the residential buildings of the military establishment which will be restored; a private complex comprising offices, residence and shopping areas; a vertical feature providing a modern image to the site and a vantage point to view the Valletta area. The project foresees the construction of underground public parking areas in the square adjacent to the Conference Centre and private parking spaces beneath the tree lined main boulevard."

Fejn jidhol il-kwistjoni dwar '*Apartment and Offices*', l-istess proposal tas-socjeta rikorrenti jipprovdi is-segweni:-

Apartments and private offices will be located on the northern side of the peninsula on the road connecting the Sliema sea-front and the central square of the complex. The buildings will have limited heights 6 floors above ground in the Gateway at the entrance and 4 floors above ground along the boulevard leading to the Conference Centre. The modern style of the buildings will be the result of a balanced combination in the use of glass and Malta stone for their facades. The complex will be designed to accomodate approximately 14,000 square meters of offices, 200 apartments and 8000 square meters of shops at ground level"

Finalment, dwar it-Tigne Fort Hotel, jinghad is-segweni:-

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"Together with the Conference Centre, the Hotel represents the most distinctive element of the project,"

F'riklam maghmul mis-socjeta rikorrenti fil-harga tas-Sunday Times tad 19 ta' Ottubru 2008, wara illi inghata il-progett, is-socjeta rikorrenti ppubblikat is-segwent:

"In 2000, work began on the €450 million project, the largest real estate redevelopment project on Malta to date.

Tigne Point will include 420 homes, 16,000 sqm on offices, an international standard retail mall, a 2500 square meter open piazza, cafes and restaurants, a clubhouse, sports facilities and a newly-built football pitch to replace the original one at the site."

F'intervista illi ta' Ben Muscat lill-gazzetta **The Times** fis 26 ta' Mejju 2005, huwa stqarr is-segwent:

"Having a 24-storey hotel might have been a good idea in 1996 when the outline development permit was approved, but since then, the best stock for five-star hotels has expanded and is already in excess of what is viable for Malta."

F'intervista illi ta' Albert Mizzi fil-**Malta Business Weekly** tas 17-23 ta' Gunju 2004, huwa qal is-segwent:-

"The point is I always tried to make clear is that this is a national project and therefore must be agreed upon by all. And we achieved that; this is the only project in Malta that was approved by Parliament without a division. The reason for this is that we discussed at length with both sides of the House. This was absolutely the right thing to do ... both sites (Tigne Point and Manoel Island) are unique and there are no other areas on the island like them. They are prime sites and people would hang me if I ruined the area and they'd be right to do so. It is a project that transcends politics."

Huwa interessanti hafna wiehed jara x'jahseb Albert Mizzi dwar il-politici u x'definizzjoni jaghti ghal kelma "korruzzjoni" li dwarha is-socjeta rikorrenti qed tilmenta fil-proceduri odjerni. In fatti, f'intervista illi ta l-istess Albert Mizzi fil gazzetta **The Sunday Times** tal 25 ta' Marzu 2012, dwar il-poltici huwa stqarr is-segwenti:-

"For me, politicians, at least many of them, are the most dishonest people in this world. Being dishonest doesn't necessarily mean stealing money. It also means that a particular person is due a promotion and deserves to have it and instead of giving it to him I give it to you."

Dwar korruzzjoni l-intervista tirrapporta lill Mizzi kif gej:-

"When asked if there is corruption in Malta, he has difficulty taking the question seriously: "Are you joking" he says, though adds it is present everywhere in the world. Does he also believe it exists at a political level? "Yes. It existed and will continue to exist. Such is life. Don't try to stop things you can't handle. What you have to do is try and control it."

Finalment, mistoqsi fuq l-izvilupp ta' Tigne, huwa jghid is-segwenti:

" Does it bother Mr Mizzi that this criticism will be one of his legacies?

Yes, but both political parties knew what was going to happen. They are the ones who issued the tender for this development. They were interested in developing the area and wanted money for it. The environmental sector didn't complain when they took that decision.

To be honest with you, today I have second thoughts about how it looks from Valletta myself. As an individual I am not totally happy with it."

Ikkunsidrat

Fil-kawza odjerna, id-difiza mressqa mill-intimat hija principalment wahda, ossija dik ta' "fair comment". Ghalhekk, ikun opportun illi jigu indikati elementi li ghandhom jitqiesu mill-Qorti sabiex tistabilixxi jekk kumment jistax jitqies bhala "fair" jew le, liema elementi gew stabbiliti mill-Qrati ta' pajjizi ohra illi fuqha ahna nibbazaw kemm il-legislazzjoni kif ukoll il-gurisprudenza taghna.

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).

Illi, minn naha l-ohra, dwar id-difiza ta' 'fair comment', kif jinghad f'**Gatley on Libel and Slander** :

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.

Huwa fatt illi d-“difiza” tal-“fair comment” dejjem kienet intiza sabiex tissalvagwardja dritt li hu importanti daqs dak li individwu jipprotegi r-reputazzjoni tajba tieghu, u cioe` id-dritt tal- espressjoni hielsa.

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.

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

In vista tal-veduti u konklużjonijiet 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 illi l-intimat kien ghamel, waqt diskors politiku illi kien qiegħed isir fl-eqqel ta' kampanja elettorali, dwar l-izvilupp illi kien sar fiz-zona ta' Tigne fejn huwa esprima t-thassib serju tieghu dwar kif sar il-progett, liema progett huwa ddeskriva bhala korrott. Issa huwa maghruf illi l-kelma "korrott", ghalkemm ghandha implikazzjonijiet komunement assimiliati ma' tehid ta' flus, ma ghandhiex biss tali konnotazzjoni, peress illi korruzzjoni tfisser it-tibdil ta' haga b'mod illi ma tibqax dak illi hija kienet originalment. Del resto, il-Qorti tinnota, kien anke l-istess Albert Mizzi, f'intervista li ta, li huwa stqarr li l-politici kollha kienu korrotti, izda mhux b'mod finanzjarju izda b'mod disonest.

(ii) *"the comment was on facts"* - jidher, mill-fatt kif prodotti, illi ghalkemm originalment il-brief mahrug mill-Gvern fis-sena 1992 kien biex tigi zviluppata l-area ta' Tigne b'Hotel u Conference Centre kif ukoll binjiet li ma jeccedux erbgha sulari u f'parti ohra sitt sulari, finalment, il-kuntratt magħmul bejn is-socjeta rikorrenti u l-Gvern ma irrilettiex dana il-brief. Il-Qorti tinnota li, ghalkemm is-socjeta rikorrenti stqarret illi nnegożjat ftehim differenti mal-Gvern, imkien ma tali ftehim qatt gie ippresentat tali ftehim lill-Qorti. Dana qiegħed jingħad ghax fil-kumment

tieghu, l-intimat wera t-thassib tieghu ghal fatt illi l-bini kien ferm oghla minn dak originalment indikat, il-yacht marina ma sairtx u l-breakwater ma inbeniex filwaqt illi l-bini storiku ma giex rinnovat. Huwa stqarr ukoll li s-socjeta rikorrenti ma kienetx qed thallas il-bollol. Tali allegazzjonijiet, mill-provi prodotti mis-socjeta rikorrenti, ma gewx kontradetti, peress illi jirrizulta mhux disputat illi originalment il-brief tal-Gvern kien illi l-bini ma jkunx aktar minn erbgha sulari oghli u f'parti minnha sitt sulari, izda eventwalment il-bini kien ferm oghla minn dak, inklu erbghatax-il sular. Ma jidhirx disputat illi il-yacht marina ghadha ma sairtx kif originalment indikat u il-breakwater ghadu ma inbeniex. Jidher ammess mill-istess socjeta rikorrenti illi huwa minnu li hija ma thallasx bollol meta tbiegh il-propjeta, u dana huwa dovut ghal fatt illi inghataw facilita' specjali mil-Gvern, liema facilita inghatat lill progetti ohra simili madwar Malta u Ghawdex. Ma huwiex kontestat illi fid-data tad-diskors, it-triq illi kellha taghmel is-socjeta rikorrenti kienet ghadha mhux lesta u di fatti dina tlestiet f'April ta' dik is-sena. Finalment, dwar ir-restawr tal-propjeta, ghalkemm huwa minnu illi kien sar restawr estensiv kemm fil-forti Manoel u fil-Fort Tigne, fil-mument illi l-intimat ghamel il-kummenti tieghu, tali restawr kien ghadu mhux kompletat.

(iii) *"the facts commented on constituted a matter of public interest"* - ma hemmx dubju illi l-izvilupp illi dwaru kien qieghed jittellem l-intimat kien zvilupp illi jirrigwarda il-pajjiz kollu u huwa ta' interess nazzjonali. Kien l-istess Albert Mizzi, f'intervista illi huwa ta' u hawn fuq rappurtata, li stqarr illi l-prohgett kien wiehed nazzjonali u jmur oltre il-politika. Ghalhekk, huwa car daqs il-kristall illi dak li dwaru kien qieghed jiddibatti l-intimat u li fiha kien qieghed jesprimi l-veduti tal-Partit tieghu ghall-elezzjoni li kienet gejjja kien fl-interess pubbliku, peress illi kienet tinvolvi art tal-Gvern illi giet mghoddija lis-socjeta rikorrenti bi skopijiet cari.

(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

kienu, prima facie, korretti u kien jaghtu stampa ta' dak li attwalment sehh, ghajr ghal kwistjoni dwar ir-restaur tal-Forti Manoel u il-Forti Tigne li ma kienx korrett ghall-kollox, allura wiehed ma jistax ma jikkonkludix illi tali kumment kien oggettivament 'fair comment', peress illi l-bazi tieghu kien fuq fatti illi gew korroborati minn dokumentazzjoni fil-pussess ta' l-intimati u esebiti lill-dina l-Qorti kif ukoll stqarrijiet illi kemm Albert Mizzi u Ben Muscat kemm quddiem dina l-Qorti kif ukoll fil-pubbliku f'gazzetti lokali.

(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."

Apparti minn hekk, jigi rilevat illi l-kummenti li ghamel l-intimat kienu parti mill-kampanja illi l-partit tieghu, Azzjoni Nazzjonali, kien qieghed jiehu kontra il-partiti politici illi kienu qed jaghmlu l-battalja politika mieghu, u jorhog car kemm mid-diskors meritu tal-kawza odjerna, kif ukoll minn dibattitu politiku iehor illi l-istess intimat ghamel u li t-transkrizzjoni taghha giet esebita mis-socjeta rikorrenti

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stess, illi l-intimat ma kienx qieghed jirreferi ghas-socjeta rikorrenti meta uza l-kliem korrudzjoni, izda kien qieghed jaghmel tali asserzjoni fil-konfront taz-zewgt partiti l-ohra illi kellhom rapprezentanti taghhom fil-MEPA u fil-Gvern li nnegozja il-ftehim finali.

Il-Qorti, tenut kont tal-fatti kollha kif esposti, id-dokumentazzjoni kif prodotta, l-istat ta' fatt ta' l-izvilupp u l-istqarrijiet illi saru fil-pubbliku, thoss illi bil-kummenti li ghamel l-intimat, ma giex ippruvat illi l-intenzjoni kienet dik illi jimmalfama lis-socjeta rikorrenti izda jidher car li l-intenzjoni kienet illi jesprimi t-thassib tieghu dwar kif tmexxa il-progett ta' Tighe.

Kif qalet il-Qorti Europeaja tad-Drittijiet tal-Bniedem fil-kawza **CHAUVY AND OTHERS v. FRANCE** (Application no. 64915/01) fid-29 Gunju 2004:

"Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly."

Konkluzjoni

Il-Qorti

Wara illi rat il-provi dokumentarji kollha prodotti quddiem dina l-Qorti u rat ix-xhieda.

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Wara illi rat in-noti ta' sottomissjonijiet taz-zewgt partijiet u semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi billi

Tilqa' l-eccezzjonijiet kollha ta' l-intimat u ghalhekk

Tichad it-talbiet attrici

Spejjez tal-proceduri odjerni ikunu kollha a kariku tas-socjeta rikorrenti

< Sentenza Finali >

-----TMIEM-----