



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

**MAGISTRAT DR.  
FRANCESCO DEPASQUALE**

Seduta tal-11 ta' Novembru, 2013

Avviz Numru. 334/2006

**Dennis Baldacchino (ID 396663M), Patrick Dalli (ID  
521555M), Carmelo Penza (ID 9855M) u Raymond  
Vella (ID 171957M)**

**VS**

**Louiselle Vassallo (ID 22572M) u Nataniel Attard**

Illum 11 ta' Novembru 2013

Il-Qorti,

Rat l-avviz ippresentat fit 3 ta' Novembru 2006 mir-rikorrenti fejn ghamlu referenza ghal xandira li giet imxandra fuq l-ahbarjiet ta' Radio 101 fl 24 ta' Ottubru 2006 koncernanti zjara illi ghamlu l-atturi f'Dubai f'Gunju 2006 u tablu lill-Qorti tiddikara illi tali xandira kienet libelluza u malafamanti fil-konfront taghhom u ghalhekk talbu lill-Qorti tikkundanna lill-intimati Louiselle Vassallo, bhala editur u Nataniel Attard, bhala prezentatur ta' l-ahbar, ihallsuhom dak l-ammont illi jidhriha xierqa l-Qorti bhala danni.

Kopja Informali ta' Sentenza

Rat ir-risposta ta' l-intimati ippresentata fit 30 ta' Novembru 2006 fejn l-intimat Attard sahaq illi huwa gie imharrek bhala prezentatur u ghalhekk ma huwiex sindakabbli mill-Ligi ta' l-Istampa. Dwar il-meritu, l-intimati sahuq illi dak minnhom pubblikat kien 'fair comment' u ghalhekk certament mhux libelluz.

Rat l-affidavits ta' **Dennis Baldacchino**, **Patrick Dalli**, **Carmelo Penza** u **Raymond Vella** lkoll ppresentati fis 27 ta' Frar 2007.

Rat ix-xhieda ta' **Dr Joseph Mifsud**, dak iz-zmien Segretarju Internazzjonali fi hdan il-Partit Laburista, moghtija fit 2 ta' Mejju 2007.

Rat l-affidavit ta' **Thomas Dimech**, dak iz-zmien Segretarju Finanzjarju tal-Partit Laburista ippresentat fit 2 ta' Mejju 2007.

Rat illi fit 2 ta' Mejju 2007 ir-rikorrenti iddikjaraw li ma kellhomx aktar provi.

Rat ix-xhieda in kontro ezami ta' **Dennis Baldacchino** moghtija fis 27 ta' Gunju 2007.

Rat ix-xhieda ta' **Jean Pierre Debono**, prodott mill-intimati u moghtija fl-24 ta' Ottubru 2007.

Rat illi bejn id 29 ta' Jannar 2008 u it-28 ta' Novembru 2011, saru ghoxrin seduta fejn il-partijiet gharrfu lill-Qorti illi kienu qed jippruvaw jittransigu l-kaz.

Rat illi fil 21 ta' Dicembru 2012 l-intimati harrku lill Dr Alfred Sant sabiex jidher quddiem il-Qorti fit 30 ta' Jannar 2012, ghal liema seduta l-istess Dr Alfred Sant naqas milli jidher.

Rat illi fit 28 ta' April 2012 l-intimati regghu harrku lill Dr Alfred Sant sabiex jidher quddiem il-Qorti fit 28 ta' Mejju 2012, ghal liema seduta l-istess Dr Alfred Sant reggha naqas milli jidher.

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Rat illi fil 11 ta' Settembru 2012 u fl 10 ta' Ottubru 2012, inhargu zewgt ingunzjonijiet lill Dr Alfred Sant ghas-seduti tal 5 ta' Ottubru u 16 ta' Novembru 2012 rispettivament, izda l-istess Dr Alfred Sant ma kienx notifikat.

Rat illi fis-seduta tas 16 ta' Novembru 2012 l-intimati ippresentaw DVD b'zewgt programmi illi fih attenda Dr Alfred Sant u sarulu mistoqsijiet dwar il-kaz meritu tal-kawza odjerna kif ukoll gew annessi t-traskrizzjonijiet ta' l-istess programmi.

Rat illi fis 26 ta' April 2013 l-intimati iddikaraw illi ma kienx fadallhom aktar provi.

Rat illi fl 14 ta' Gunju 2013 il-kawza giet differita ghas-sentenza ghas 7 ta' Ottubru 2013 bil-fakolta' tan-noti ta' sottomissjoniet da parte tal-partijiet.

Rat illi sas 7 ta' Ottubru 2013, sottomissjonijiet kienu ghadhom ma sarux u ghalhekk differit il-kawza ghallum ghas-sentenza.

### **Ikkunsidrat**

Il-kawza odjerna tirrigwarda ahbar illi giet trasmessa fl-ahjarjiet ta' NET Television fl 24 ta' Ottubru 2006 fejn gie irrappurtat illi "Deputat Laburisti li f'Gunju li ghadha siefru Dubai bhala parti mid-delegazzjoni ufficjali tal-MLP ghamlu dan ix-xoghol ghal kumpanniji li ghandhom ma' kuntratturi li kienu jiffurmaw parti mill-istess delegazzjoni". Ir-rappurtagg ikompli jghid illi nies fi hdan l-MLP kienu qed jistaqsu ghaliex dana sar meta ma kien hemm ebda diskussjoni interna dwarha u sar bil-mohbi meta l-finanzi tal-MLP kienu qed jaghmlu tajjeb.

L-istess ahbar xandret ukoll silta minn programm imtella minn Lou Bondi gimghatejn qabel fejn intervista lill Dr Alfred Sant, dak iz-zmien kap tal-Malta Labour Party, f'liema xandira Bondi jsemmi lill Carmelo Penza, Patrick Dalli, Raymond Vella u Denis Baldacchino bhala l-kummercjanti li ffurmaw parti mid-delegazzjoni li kienet

tinkludi lill Charles Mangion, Leo Brincat, Charles Buhagiar u Dr Joe Mifsud. Bondi ukoll jinstema jghid illi l-erbgha kummercjanti lkoll kellhom konnessjonijiet mal-Malta Labour Party jew ma xi membru tad-delegazzjoni.

Dr Alfred Sant huwa rappurtat jghid illi "dan kien eżercizzju fejn ridna naraw x'kien qed isir Dubai f'dak li ghandu x'jaqsam ma zvilupp turistiku u land reclamation u bini hemm hekk" u, dwar l-attenzenza ta' l-erbgha kuntratturi jghid "tkellmu bejniethom u gew huma. Ghaliex le?"

Skond ix-xhieda ta' l-erbgha rikorrenti, huma kienu gew a korrent tal-fatt illi kienet tiela delegazzjoni tal-Malta Labour Party gewwa Dubai beix tosserva l-procedura ta' reklamazzjoni ta' l-art u ghalhekk talbu jekk setghux jitolghu flimkien mad-delegazzjoni tal-MLP. Huma gew mgħarrfa li peress illi kienet delegazzjoni politika, huma ma setghux jiffurmaw parti mid-delegazzjoni, madanakollu, jekk riedu jitolghu, setghu jitolghu magħhom imbgħad il-konslu ta' Malta gewwa d-Dubai seta' jorganizzalhom programm biex josservaw certi progetti ta' interess tagħhom.

L-istess rikorrenti, di fatti, lkoll ibbukjaw il-vjagg tagħhom ma 'Hamilton Travel Co Ltd' u telghu lkoll flimkien mad-delegazzjoni tal-MLP, a spejjez tagħhom. Huma ghalhekk jikkontendu illi l-fatt li intqal li huma ffurmaw parti mid-delegazzjoni laburista u li rcevev xi ghajnuna finanzjarja minghand l-MLP kien malafamanti u ingurjuz fil-konfront tagħhom peress illi ma kien minnu assolutament xejn. Huwa jistqarru illi ma kien hemm xejn bil-mohbi u huma l-erbgha telghu Dubai "bhala erbgha hbieb u kollegu fuq zjara privata", kif qal Raymond Vella fl-affidavit tieghu.

Skond ix-xhieda ta' Dr Joseph Mifsud, dak iz-zmien Segretarju Internazzjonali tal-MLP, dawna l-erbgha kuntratturi, ghalkemm ma kienux jiffurmaw parti mid-delegazzjoni, telghu u nizlu minn Dubai flimkien mad-delegazzjoni u għadu fl-istess lukanda illi fiha kien hemm id-delegazzjoni laburista. Huwa stqarr ukoll illi fil-laqgħat li saru Dubai, minhabba f'diffikultajiet logistici, attendew

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ukoll l-erbgha kuntratturi mad-delegazzjoni laburista peress illi ma keinx possibbli li jsiru zewgt appuntamenti separati. Madankollu, insista illi ma kienux jiffurmaw parti mid-delegazzjoni tal-Partit Laburista.

Jean Pierre Debono, dak iz-zmien gurnalista ma' Radio 101, stqarr illi mill-informazzjoni illi huwa kien ottjenta, kumpannija estera bl-isem ta' 'Lama Desert Tourism & Cargo LLC' kienet irriservat kmamar fil-lukanda Movenpick Hotel fit 18 ta' Gunju 2006, liema lista kienet telenka tmien persuni b'kollox, li kienu jinkludu Dr Charles Mangion, indikat bhala Deputy Leader, Dr Joe Mifsud, indikat bhala International Party Secretary, Leo Brincat u Charles Buhagiar flimkien ma' l-erba rikorrenti fil-kawza odjerna, ossija Dennis Baldacchino, Carmelo Penza, Patrick Dalli u Ray Vella.

Abbazi ta' tali informazzjoni, Debono stqarr illi huwa kiteb l-istorja meritu tal-kawza odjerna. Huwa stqarr li, minn investigazzjoni illi kien ghamel, il-vista tad-delegazzjoni tal-Malta Labour Party gewwa Dubai ma kienetx giet diskussa la fil-Grupp Parlamentari u lanqas fl-Ezekuttiv Nazzjonali tal-Malta Labour Party, u kien ghalhekk illi intqal fir-rappurtagg illi dana kollu sar fil-mohbi tal-Malta Labour Party.

## Ikkunsidrat

Id-difiza ta' l-intimati, fuq il-meritu, hija 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-Qorti 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**

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 gie rappurtat fi programm televiziv illi kien ittella ftit gimghat qabel fejn Dr Alfred Sant, dak iz-zmien mexxej tal-Partit Laburista, gie mistoqsi dwar zjara illi saret minn delegazzjoni tal-Partit Laburista u li maghha attendew



erbgha kuntratturi b'simpatiji lejn il-Partit Laburista, dak iz-zmien imsejja Malta Labour Party.

(ii) "*the comment was on facts*" - jidher, mill-fatt kif prodotti, illi ghalkemm huwa minnu li l-erbgha rikorrenti hallsu ghal-vjagg taghhom huma stess, jirrizulta wkoll bhala fatt indisputabbli illi r-rikorrenti telghu flimkien mad-delegazzjoni tal-Partit Laburista, ghadu fl-istess lukanda fejn kienu l-erbgha delegati tal-Partit Laburista, kif jidher mill-'Booking Form' esebita mill-intimati u attendew ghal-laqghat flimkien mad-delegazzjoni Laburista, kif stqarr is-Segretarju Internazzjonali ta' dak iz-zmien, Dr Joseph Mifsud.

(iii) "*the facts commented on constituted a matter of public interest*" - ma hemmx dubju illi l-fatt delegazzjoni ta' Partit li ghandu membri tieghu fil-Parliament, liema delegazzjoni kienet tinkludi tlett Membri tal-Parliament fost l-erbgha membri tad-delegazzjoni, inkluz id-Deputat Mexxej tal-Partit dak iz-zmien, ossija Dr Charles Mangion telghet biex taghmel vista ufficjali gewwa Dubai kienet, minnha innifisha, tikkostitwixxi kwistjoni ta' interess pubbliku. Tali interess, naturalment, jizdied in vista tal fatt illi, flimkien ma tali delegazzjoni, telghu erbgha kuntratturi illi kellhom simpatiji lejn il-Partit Laburista.

(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 min hallas ghal tali vista, 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.

(v) "*the comment represented the defendant's honest opinion.*" - bhalma sahqu 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.”*

Ma hemm xejn li jwassal il-Qorti tiddubita illi l-intimati, jew min kiteb l-istorja meritu tal-kawza odjerna, fil-mument illi inkiteb tali artikolu kien jemmen onestament li dak minnhom irrappurtat attwalment sehh.

Il-Qorti thoss illi jkun opportun taghmel referenza ghal dak illi gia gis stabbilit mill-Qrati lokali dwar gurnalizmu investigativ. Kif kien stqarret il-Prim'Awla tal-Qorti Civili fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** fit-23 ta' Marzu, 2009,

*“f’kawzi bhal prezenti, u cioe f’kawza ta’ libell, hemm bilanc li ghandu jinzamm bejn id-dritt f’socjeta’ demokratika li wiehed jghid u jesprimi ruhu u jsemmi l-opinjoni tieghu bl-aktar mod liberu u bejn id-dritt ta’ kull cittadin li jgawdi reputazzjoni u l-isem tajjeb tieghu u dan dejjem fl-isfond ta’ socjeta demokratika.”*

Il-Qorti tal-Appell, imbghad, fl-istess kawza deciza fit-3 ta' Frar, 2012 ziedet tghid li  
*“gurnalizmu investigattiv ghandu jinghata ampja protezzjoni f’socjeta’ demokratika, anke jekk certi allegazzjonijiet jigu michuda minn dak milqut, il-gurnalist dejjem jibqalghu d-dritt li jinvestiga u jistharreg fuq allegazzjoni anke jekk tibqa’ allegazzjoni mhux pruvata kif*

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*trid il-Ligi. F'dak li jsir gurnalizmu investigattiv serju, anke meta jirrizulta zball genwin, jista' wkoll ikun tollerat."*

Fil-kawza odjerna, huwa car u minghajr ebda dubju illi l-istorja kienet rizultat ta' investigazzjoni li saret mill-intimati jew min kiteb l-istorja li giet imxandra, liema storja kienet wahda valida u li kellha l-elementi kollha biex tigi imxandra hekk kif kienet, u ghalhekk il-Qorti ma tara ebda raguni ghaliex ghandha tiddikjara dak kontenut fiha bhala malafamanti u libelluz fil-konfront tar-rikorrenti.

## **Konkluzjoni**

Il-Qorti

Wara illi rat il-provi kollha prodotti u d-dokumentazzjoni kollha imressqa

Wara illi kkunsidrat il-fatti kollha w il-gurisprudenza dwar il-fatti u difizi kif migjuba,

Tghaddi beix taqta' u tiddeciedi billi

Tilqa l-ecezzjonijiet kollha ta' l-intimati u

Tichad it-talbiet attrici.

Spejjez tal-proceduri kollha ikunu a karigu tar-rikorrenti.

Il-Qorti issib ukoll lill Dr Alfred Sant hati ta' disprezz lejn l-Awtorita tal-Qorti meta huwa naqas milli jidher quddiem il-Qorti fis-seduti tat 30 ta' Jannar 2012 u 28 ta' Mejju 2012 minkejja li kien debitament imharrek u notifikat biex jidher quddiem dina l-Qorti u timmultah multa komplessiva ta' mitejn Euro (€200).

**< Sentenza Finali >**

-----TMIEM-----