



**QORTI TAL-MAGISTRATI (MALTA)
MAGISTRAT DR.
FRANCESCO DEPASQUALE**

Seduta ta' l-10 ta' Marzu, 2014
Avviz Numru. 203/2007

Seduta ta' nhar it-Tnejn (10) ta' Marzu 2014

Rikors Numru 203/07 FDP

Fl-ismijiet

Perit Jesmond Mugliette
(ID 247163M)

vs

Dr Alfred Sant
(ID 267948M)

Il-Qorti

Rat ir-rikors promotur ippresentat fis 6 ta' Lulju 2007 fejn ir-rikorrenti talab lill-Qorti sabiex tikkundanna lill-intimat ihallsu danni u riparazzjoni tal-malafama li sofrta meta l-intinat, waqt attivita' "Pjan Laburista Bidu Gdid" gewwa Haz-Zebbug, qal kliem kif rappurtati fi stqarrija mahruqa fl 1 ta' Lulju 2007 fis-sens illi "*Waqt li fakkar li l-Prim Ministru Gonzi ihobb jghid li l-affarjiet ma jsirux b'kumbinazzjoni l-Mexxej Laburista qal li fil-fatti l-inefficjenzi u n-nuqqas ta' ippjanar tajjeb f'hafna xoghol fuq toroa u progetti ohrajn ma jsirux b'kumbinazzjoni izda jsiru ghaliex hemm min qed igawdi minnhom*", f'liema diskors ghmel allegazzjonijiet foloz u malafamanti fil-konfront ta' l-attur, li kien Ministru responsabbli ghat-Toroq fiz-zmien meta ntqalu, bil-ghan li jtellfu jew inaqqsu ir-reputazzjoni tieghu, meta l-itnimit insinwa b'dan il-kliem li l-attur hu responsabbli ta' xi tip ta' koruzzjoni fil-progetti ta' toroq u progetti ohra li qed isiru madwar Malta meta dan huwa ghal kollox iveritjer u ta' dan kollu l-intimat kien ben konsapevoli li huma malafamanti izda xorta baqa jghidhom.

Rat l-Istqarrija ghall-Istampa mahruqa mill-Partit Laburista fl 1 ta' Lulju 2007 u r-rappurtagg illi deher fil-gazzetta l-Orizzjont fit 2 ta' Lulju 2007.

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Rat ir-risposta ta' l-intimat ippresentat fid 9 ta' Awissu 2007 fejn, filwaqt illi eccepuxxa preliminarjaent li r-rikorrent kellu jipprova d-diskors illi huwa ghamel, sahaq illi tali diskors ma kienx libelluz fil-konfront tar-rikorrent peress illi hija kritika politika maghmulha fil-vesti tieghu ta' deputat tal-poplu, fuq materja ta' interess pubbliku, dwar l-amministrazzjoni pubblika.

Huwa stqarr ukoll illi d-diskors kien jikkonsisti f'espressjoni ta' l-opinjoni u apprezzament, jew "value judgment", tal eccipjent, li huwa "fair comment" fuq materja ta' interess pubbliku, ammissibbli kemm taht il-Ligi ta' l-Istampa, kemm taht il-Kosituzzjoni ta' Malta u l-Konvenzjoni Ewropeja dwar id-Drittijiet u l-Libertajiet Fundamentali tal-Bniedem.

Rat l-affidavit tar-rikorrent, **Jesmond Mugliett** ippresentat fit 23 ta' Jannar 2008.

Rat ix-xhieda ta' **Frans Ghirxi**, editur dak iz-zmien tal-gazzetta l-Orizzont, moghtija fis 27 ta' Mejju 2008, li kkonferma l-artikolu fuq indikat.

Rat ix-xhieda ta' **Dr Stefan Zrinzo Azzopardi**, rappresetant tal-Partit Laburista, moghtija fl-4 ta' Novembru 2009, li kkonferma l-Istqarrija tal-Partit Laburista fuq indikata.

Rat il-kontro ezami tal-Perit **Jesmond Mugliett** moghti fl-1 ta' Frar 2011.

Rat illi mid 19 ta' April 2011 sat 30 ta' Settembru 2013, l-intimat kellu tlettax-il seduta sabiex iressaq il-provi tieghu, izda dana qatt ma sehh u fil 15 ta' Novembru 2013, il-Qorti iddikjarat il-provi tieghu bhala maghluqa.

Semghet it-trattazzjoni orali tal-abbli difensuri tal-partijiet moghtija fl-20 ta' Jannar 2014.

Ikkunsidrat

Mill-provi kollha prodotti, jirrizulta illi waqt attivita' tal-Partit Laburista illi sar gewwa Haz-Zebbug fl 1 ta' Lulju 2007, l-intimat, dak iz-zmien Kap ta' l-Opposizzjoni, ghamel referenza ghall fatt li r-rikorrent, dak iz-zmien Ministru tal-gvern tal-gurnata u responsabbli mill-Awtorita ghat-Trasport, kif kienet hemm maghrufa dak iz-zmien, ossija ADT, kien ghamel pressjoni sabiex zewt impjegati tal-ADT, minkejja li intsabu hatja ta' tixhim waqt il-qadi tax-xoghol taghhom mill-Qrati, ma jitkecewx mill-Awtorita' u talab lill-Prim Ministru jiehu passi immedjati fil-konfront ta' l-intimat.

L-intimat imbghad ghamel referenza ukoll ghall-kazijiet ta' tixhim fid-Dipartiment tas-Sigurta Socjali, li fiha kien involut allegatament persuna fi hdan is-segretarjat privat tal-Ministru ta' dak iz-zmien Dr Louis Deguara.

Aktar tard, l-istess intimat, kif irrappurtat mill-Istqarrija ghall-Istampa ippubblikata mill-Partit Laburista dakinhar ta' l-intervent, qal is-segwenti:-

"waqt li fakkar li l-Prim Ministru Gonzi jghid li l-affarjiet ma jsirux b'kombinazzjoni, l-Mexxej Laburista qal li fil-fatt l-inefficjenzi u n-nuqqas ta' ippjanar tajjeb f'hafna xoghol fuq toroq u prgetti ohra ma jsirux b'kombinazzjoni, izda jsiru ghalhiex hemm min qed igawdi minnhom. Dr Sant semma l-by pass ta' San Pawl il-Bahar li supst kellha tinfetah mill-gdid nhar il-

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Gigha, xi haga li izda ma gratx ghaliex fl-ahhar gimgha instab li xi xoghlijiet tad-drenagg keinu ghadhom ma sarux. "B'min tahseb li se jitmejlu?" staqsa l-Mexxejj Laburista."

L-istqarrija tkomli tghid is-segwenti:

"Dr Sant sahaq li ma jistax ikun li progett wiehed wara l-iehor idum ma jitlesta u jigi jqum hafna iktar minn kemm suppost u l-gvern jibqa' ma jitghallem qatt. Qal li l-Inginiera u l-politici Maltin, jekk iridu, fil-maggoranza taghhom, jafu kif l-affarjiet gahndhom isiru b'mod ippjanat tajjeb. Il-Mexxejj Laburista qal li l-Prim Minstru Gonzi ghandu l-ikbar responsabbilita' ghal dan kollu ghaliex qed jittollera u qed ihalli dawn il-hnizrijiet ghaddejjin."

Ikkunsidrat

Mill-provi kollha prodotti, jirrizulta illi r-rikorrenti qieghed joggezzjona ghal dak li intqal mill-intimat peress illi kien qieghed jichad li jekk saru xi zbalji, kien hemm l-intenzjoni u l-premeditazzjoni li jsiru dawn l-ibalji sabiex xi hadd igawdi minnhom. Huwa sahaq li dejjem ghamel minn kollox biex inaqqas il 'cost overruns' u oggezzjona ghal allegazzjoni li hemm inefficjenzi u nuqqas ta' ippjanar tajjeb fi hdan il-Ministeru li ghalih huwa kien responsabbli politikament. Ir-rikorrent cahad illi qatt irceva xi flus jew xi rigal fi kwalsiasi forma rizultat ta' dawn l-izbalji kif kien qed jimplika l-intimat.

In kontro ezami, ir-rikorrent stqarr li l-ADT kienet korporazzjoni awtonoma li kellha l-programmi taghha imfassla minn qabel ma sar ministru hu. Sahaq illi ma kienx responsabbli ghal-hrug ta' tenders u specifications, liema resposabbilita' kienet tal-ADT. Huwa stqarr illi l-mod kif kien isir ix-xoghol kien decizjoni ta' l-Inginiera tal-ADT, u hu qatt ma kien jinvolvi lilu nniffsu fl-ezekuzzjoni u fl-iprojettar ta' dawn il-progetti.

Dwar l-allegazzjoni ta' 'overruns' u l-progett tal-by pass ta' San Pawl il-Bahar, li dwaru tkellem l-intimat meta hassu malafamat ir-rikorrent, huwa ikkonferma illi irrizulta li nefqu madwar era mitt elf Euro aktar milli progettat u il-progett dam aktar milli progettat sabiex jitlesta peress illi wiehed mill-propretarji ta' fond adjacenti, li kien anke sub-appaltatur fil-kuntratt tat-triq, Polidano, kien qieghed idum sabiex ilesti xoghljiet ta' tishih ta' propjeta adjacenti tieghu wara illi t-triq kienet cediet rizultat tax-xoghlijiet ta' ristrutturar li kienu qed isiru, fostom minn Polidano stess.

Ikkunsidrat

Id-difiza imressqa mill-intimat fil-proceduri odjerni huma illi l-kummenti tieghu, filwaqt illi kienu parti minn kritika politika illi huwa kien qieghed jaghmel u li kellu obbligu jaghmel lejn ic-cittadini li kienu elegguh bhala rappresnetant taghhom fil-Parlament, kien jikkonsistu fi 'fair comment' u ghalhekk kellhom jitqiesu bhala tali.

Din il-Qorti gia kellha l-opportnita' kawza odjera deciza ftit ilu, ossija '**Dr Joseph Mifsud vs Robert Arrigo**' deciza fl 24 ta' Frar 2014, illi tezamina fir-reqqa il-principju tal-"fair comment" u dwar kif dana zviluppa maz-zminijiet kemm fil-gurisprudenza Ingliza u dik tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem. Madankollu, ikun opportun illi jigu indikati certi

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principji bazilari li taghhom ghandha tiehu konsiderazzjoni kull Qorti hekk kif tkun qed tikkunsidra tali difiza.

Kif intqal fil-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kawza **Chauvy and Others vs France** deciza fid 29 ta' 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.

Dwar il-livell ta' kritika li politiku tista ssirlu, bhalma ma gara fil-kaz odjern, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-sentenza **Ligens vs Austria** deciza fit 8 ta' Lulju 1986, u abbraccjata mill-Qorti Maltin, stabbiliet principji ferm aktar liberali fil-konfront tal-politici mill-individwu kwalsiasi u di fatti qalet:-

..... freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Din il-Qorti tirrileva wkoll illi wasal il-mument illi tali regola titwessa aktar fis-sens illi meta jkun hemm dibattitu politiku ghaddej bejn politici, tali livell ta' kritika ghadha tigi interpretata f'livell aktar wiesgha minn dak ipprovdut hawn fuq, peress illi d-dibattitu politiku huwa l-pern ta' socjeta demokratika u, ghalhekk ghandha tigi protetta u stimolata minn dina l-Qorti u mhux imxekkla fl-operat taghha.

Dwar in-natura ta' "value judgment", kontrastata mal-kuncett ta' "statement of fact" u jekk din ghandhiex ikollha applikabbli r-regoli tal-"fair comment" jew le, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-sentenza taghha **Sizma vs Hungary** deciza f'Ottubru 2012, starret is-segwenti:

.... in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is

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generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (*see, for example, Lingens v. Austria, 8 July 1986, § 46, Series A no. 103; Oberschlick v. Austria (no. 1), cited above, § 63*). The classification of a statement as a fact or 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 (*see Pedersen and Baadsgaard v. Denmark [GC], no. 49017/99, § 76, ECHR 2004-XI*). However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be excessive (*see Jerusalem v. Austria, no. 26958/95, § 43, ECHR 2001-II*)."

Dwar in-natura ta' 'fair comment', kif jinghad f' **Gatley on Libel and Slander**, huwa stabbilit illi biex tali difiza tirnexxi :

..... 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.

Dina l-posizzjoni tidher anke riflessia fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl-1 ta' Dicembru 2010, fejn Lord Phillips ghamel is-segwent i 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.

Ikkunsidrat

Tenut kont tal-veduti kif enuncjati minn Qrati li fuqhom dawna il-Qrati regolarment jaghmlu referenza u bazi, il-Qorti ser issa tghaddi sabiex tevalwa l-fatti kif ppresentati quddiem dina l-Qorti fl-ottika tal-hames elementi imsemmija minn Lord Philips sabiex jigi stabbilit jekk, fil-kaz odjern, dak illi intqal kienx 'fair comment' jew le.

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- (i) *"the words complained of were comment"* - ma hemmx dubju illi l-kliem li dwarhom qieghed jilmenta ir-rikorrent kif indikat lill-dina l-Qorti u li intuzaw mill-intimat waqt attivita tal-Partit Laburista kienu kumment ta' l-intimat dwar fatti li kienu qed isehhu dak iz-zmien u cirkostanzi li wasslu lill-intimat biex jaghmel il-kumment, kif del resto huwa stess ammetta in-natura ta' kumment fid-difiza tieghu stess.
- (ii) *"the comment was on facts"* - jidher illi l-kumment li fuqu r-rikorrent kien qieghed jilmenta jirrigwarda l-fatt li kien hemm inefficjenzi u nuqqas ta' ippjanar fix-xoghlijiet tat-toroq, u tali fatt ma kienx qieghed isir b'kombinazzjoni izda sabiex igawdi xi hadd minnhom. Jirrizulta ammess mir-rikorrent stess illi dwar il-progett tal-By-pass ta' San Pawl il-Bahar, li ghalih l-intimat kien qieghed jaghmel referenza meta ghadha il-kumment li dwaru lmenta ir-rikorrent, damet aktar milli previst sabiex infethet u, meta infethet, kien hemm problemi minhabba fil-fatt illi kien hemm problemi ta' tishih tat-triq wara illi dina kienet cediet rizultat tax-xoghol tal-kuntrattur li kien qieghed jaghmel il-progett. Jirrizulta ukoll ammess illi, bhala rizultat ta' tali hsarat li graw kif ukoll ghal ragunijet ohra, il-progett gie jiswa madwar erba mitt elf Euro aktar minn previst. Jirrizulta, finalment, indikat ukoll mix-xhieda tar-rikorrent stess, illi wiehed mill-kuntratturi li ghamlu x-xogholijiet strutturali u li ghalhekk ikkawzaw il-hsarat fit-triq, kien l-istess persuna li kien il-propretarju tas-sit li ceda rizultat tax-xoghlijiet u li kien qieghed jiddilunga, bhala sid, fix-xoghlijiet ta' tishih necessarji biex it-triq titlesta. Finalment, jirrizulta illi l-persuni responsabbli mill-ippjanar u evalwazzjoni tat-toroq kienet l-Awtorita ghat-Trasport, dak iz-zmien imsejja ADT, u dina kienet taqa' taht ir-responsabbilta tal-Ministeru illi kellu r-rikorrent fiz-zmien meta sar il-kumment da' parte ta' l-intimat.
- (iii) *"the facts commented on constituted a matter of public interest"* - ma hemm assolutament ebda dubju illi l-fatti li dwarhom tkellem l-intimat u dwarhom ilmenta ir-rikorrent kienu ta' interess pubbliku, peress illi l-bini ta' triq gdida u l-infieq oltre dak originament ippjanata ma jistax ma jitqiesx bhala ta' interess pubbliku.
- (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 tal-fatti kif fuq indikati u kkunsidrati minn dina l-Qorti, jidher illi tali kummenti ma jistghux ma jitqiesux bhala oggettivament gusti peress illi huwa rizultat ta' konsiderazzjonijiet fattwali u korretti maghmulha mill-intimat u li abbazi taghhom wasal ghall-konkuzjonijiet tieghu. Huwa car ukoll illi anke il-qarrejj jew semmiegh komuni seta jasal ghal tali konkluzjonijiet ukoll u, fil-probabilita' kbira, l-intimat kien biss qieghed jirrifletti dak li attwalment ic-cittadin komuni kien gia qieghed jghid dwar il-kwistjoni li dwarha tkellem l-intimat.

Kif sqarret il-Qorti Ingliza fil-kawza ***Merivale v Carson (1887) 20 QBD 275, 280-281***: *"Mere exaggeration, or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the jury must consider is this – would any fair man,*

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however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticised? If it goes beyond that, then you must find for the plaintiff; if you are not satisfied that it does, then it falls within the allowed limit, and there is no libel at all."

- (v) "*the comment represented the defendant's honest opinion.*" - Fil-kaz odjern, il-Qorti hija konvnita illi l-kumment illi ghamel l-intimat ma' kienx bbazat fuq malizzja da parte tieghu izda kienet l-opinjoni onesta tieghu dwar kif kien qieghed jifhem li graw l-affarjiet, liema opinjoni, huwa kellu kull dritt illi jaghmel, aktar u aktar in vista tal-fatt illi kien Deputat tal-Poplu elett sabiex jirrappresenta c-cittadin u l-interessi tieghu.

Il-Qorti tirrileva wkoll illi, ghalkemm fid-diskors tieghu, l-intimat jaghmel referenza principali ghar-rikorrent, filwaqt illi jirreferi ukoll ghall-Ministri ohra li fil-ministeri taghhom kien hemm istanzi ta' tixhim, fil-parti li fiha l-intimat jilmenta dwarha, l-intimat ma jaghmel ebda referenza diretta lejn ir-rikorrent u anzi, jaghmel referenza kemm ghal politici in generali kif ukoll lill-inginiera in generali, fatt li ghalhekk juri wkoll illi l-intimat ma kienx qieghed jindirizza dawna il-kliem kontra ir-rikorrent, izda kienu intizi lejn is-sistema kollha tal-ADT illi kien hemm dak iz-zmien, u li dwarha ir-rikorrent kien politikament responsabbli.

Tenut kont tal-konsiderazzjonijiet kollha hawn fuq maghmulha, il-Qorti thoss illi l-kliem li intuzaw mill-intimat waqt id-dibattitu politiku illi huwa kien qieghed jindirizza u li kienet tirrigwarda l-operat ta' entita' li taghha r-rikorrent kien ministru u n-nuqqasijiet taghha li wasslu biex jintefqu aktar flus milli previst, huma 'value judgment' ta' l-intimat li ghandhom jitqiesu bhala 'fair comment', u ghalhekk ma jistghux jitqiesu bhala libelluzi fil-konfront tar-rikorrent.

Konkluzjoni

Il-Qorti

Wara illi rat il-provi kollha prodotti u semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeiciedi billi

Tilqa l-ecezzjonijiet ta' l-intimat u tiddikjara illi l-kliem li ntqalu mill-intimat gewwa attivita' f'Haz Zebug u rrapportati minn stqarrija tal-Partit Laburista fl 1 ta' Lulju 2007 jikkonsistu f'espresjoni ta' opinjoni u apprezzament tal-fatti li ghandhom jigu kkunsidrati bhala 'fair comment' fuq materja ta' interess pubbliku, u ghalhekk

Tichad it-talbiet attrici kollha

In vista tad-dilungar zejzed da parte ta' l-intimat, kull parti ghandha tbaghti lis-spejjez taghha.

< Sentenza Finali >

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