



MALTA

QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI
MAGISTRAT DR.
FRANCESCO DEPASQUALE

Seduta tat-18 ta' Gunju, 2014

Numru 8/2011

Onorevoli Joe Mizzi

vs

John Zammit

Il-Qorti,

Rat l-akkuzi migjuba kontra l-akkuzat John Zammit, ta' 62 sena, bin il-mejtin Joseph u Filippa nee' Sammut, imwieled is-Siggiewi fl-10 ta' Frar 1949 u residenti gewwa 'Aquarius', 6, Qasam tal-Bini tal-Gvern, Rinella, Kalkara, detentur tal-Karta ta' l-Identita' nru 171949(M) fejn gie akkuzat mill-Onorevoli Joe Mizzi M.P.

- a. Talli fix-xahar ta' Novembru 2010 u fix-xhur precendenti, bil-hsieb li ttellet jew tnaqqas mill-gieh ta' l-Onorevoli Joe Mizzi u persuni ohra, weggajtu bi kliem, b'gesti, b'kitba u b'disinji; u
- b. Talli, fl-istess periodu ta' zmien, permezz tal-mezzi tax-xandir, immalafamajt lill Onorevoli Joe Mizzi u persuni ohra.

Il-Qorti giet mitluba sabiex, barra milli tapplika l-piena skond il-Ligi, tordna lill-imputat ihallas l-ispejjez li ghandhom x'jaqsmu mall-hatra ta' esperti skond l-Artikolu 533 tal-Kap 9 tal-Ligjiet ta' Malta.

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Rat il-kwerela maghmulha mill-istess Onorevoli Joe Mizzi mibghuta lill-Kummissarju tal-Pulizija fit 12 ta' Jannar 2011.

Rat il-kunsens tal-Avukat Generali moghti fis 16 ta' Awissu 2011.

Semghet ix-xhieda tal-kwerelant **Onorevoli Joe Mizzi** moghtija fid 29 ta' Ottubru 2012 u fis 17 ta' Jannar 2013 kif ukoll dokumentazzjoni ippresentata mill-prosekuzzjoni flimkien ma' l-att promotur kif ukoll mill-istess kwerelant seduta stante.

Semghet ix xhieda ta' **Jesmond Borg**, gia Spettur tal-Pulizija illi kien investiga l-kaz u nieda l-proceduri odjerni, moghtija fis 17 ta' Jannar 2013.

Rat illi fis 16 ta' Mejju 2013, fuq talba ta' l-akkuzat, gew allegati l-atti tal-process tal-Prim Istanza u l-Appell tal-kawza '*Il-Pulizija vs John Zammit*', deciza mill-Qorti ta' l-Appell fit 28 ta' Ottubru 2011.

Rat illi, permezz tas-sentenza tal-Qorti ta' l-Appell fuq imsemmija, l-akkuzat gie liberat mill-akkuzi maghmulha kontrih illi, f'Marzu 2009 u fix-xhur precedenti, bil-hsieb li jtellef jew inaqqas mill-gieh ta' l-Onorevoli Joe Mizzi u persuni ohra, wegghu bi kliem b'gesti, b'kitba u b'disinji kif ukoll, fl-istess periodu, permezz tal-mezz ta' xandir, immalafama lill-Onorevoli Joe Mizzi u persuni ohra.

Rat illi fis-seduta tat 3 ta' Ottubru 2013, l-akkuzat iddikjara illi kien ser jistrieħ fuq il-provi illi kien hemm u ma kienx ser jixhed.

Semghet it-trattazzjoni tal-partijiet illi saret fil 21 ta' Novembru 2013, wara liema data il-kawza thalliet ghas-sentenza.

Ikkunsidrat

Jirrizulta, mill-process kollu redatt quddiem dina l-Qorti, illi minkejja li tali proceduri kienu ta' natura sommarja, il-Qorti giet inondata b'dokumentazzjoni generika prodotta allegatament mill-akkuzat u li mhux necessarjament kellha relevanza għall-proceduri odjerni.

Jirrizulta wkoll illi, waqt ix-xhieda tal-kwerelant Joe Mizzi, filwaqt illi għamel referenza għax ftit mill-pagni mid-dokumentazzjoni illi esebiet il-prosekuzzjoni fejn huwa hassu malafamat, ippresenta dokuemntazzjoni ulterjuri illi biha l-kwerelant hassu malafamat.

Jirrizulta, mill-provi prodotti, partikolarment il-process tal-kawza deciza mill-Qorti ta' l-Appell fuq indikata, illi, l-akkuzat kien gia gie akkuzat ta' l-istess akkuzi għall-periodu tax-xahar ta' Marzu 2009 u fix-xhur precedenti, minn liema akkuzi huwa kien gie liberat.

Jirrizulta, mill-akkuzi, illi l-akkuzat qed jigi imharrek fuq azzjonijiet illi huwa allegatament għamel f'Novembru 2010 u fix-xhur precedenti.

Jirrizulta, għalhekk, illi l-unika azzjonijiet allegatament malafamanti illi dina l-Qorti għandha tikkunsidra huma dawk illi sehhew wara Marzu 2009 u mhux aktar 'l quddiem minn Novembru 2010.

Ikkunsidrat

Jirrizulta mill-provi prodotti, illi l-kwerelant qed ihossu malafamat mill-kontenut ta' dak illi huwa miktub fuq is-sit 'mintoffjani.webs.com', fejn dawna isemmu lill-istess kwerelant.

Il-Qorti, f'dana l-istadju, ma tistax ma tinnutax illi, filwaqt illi jirrizulta illi l-allegati fatti li semmew dwar il-kwerelant Joe Mizzi lkoll jidher illi intqalu fis-sena 2011 'l quddiem, ma jirrizulta bl-ebda mod ippruvat illi attwalment kien l-akkuzat l-awtur ta' l-artikoli meritu tal-kawza odjerna.

Ghalhekk ma jirrizultax ippruvat la illi l-akkuzat kien l-awtur ta' l-artikoli li l-kwerelant hassu malafamat bihom fil-periodu indikat fl-akkuza u wisq anqas illi l-akkuzat, b'xi mod, fil-periodu indikat fl-akkuza, wegga bi kliem, gesti, kitba jew disinj lill-kwerelant Joe Mizzi.

Ikkunsidrat

Il-Qorti tista facilment tieqaf hawn. Izda, madanakollu, ikun opportun illi dina l-Qorti taghmel certi osservazzjonijiet relatati ma' kritika li tista ssir lill-politici, u dawna mhux biss mill-Qrati Maltin, izda mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, li hija l-oghla organu li tikkunsidra id-drittijiet tal-bniedem, fosthom id-dritt ghal liberta' ta' l-espressjoni.

Illi, dwar il-livel ta' kritika li politiku tista ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria** deciza fis-sena 1986, u abbracjata mill-Qorti Maltin, intqal illi:-

Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, 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.

Tali principji zviluppaw ulterjorment maz-zminijiet u, fil-kawza **Chauvy & Others vs France** deciza fid-29 June 2004, intqal illi

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

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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.

Tali posizzjoni hija, illum il-gurnata, kristallizata mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, u adottata minn dawna l-Qrati regolarment, kemm kif presjeduta kif ukoll qrati ohra.

Fil-kawza **Petrenco vs Moldova** deciza 30 March 2010 intqal is-segwent:

"The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards afforded to the press are of particular importance. Although it must not overstep certain boundaries, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting information and ideas, the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of “public watchdog” (see, inter alia, Observer and Guardian v. the United Kingdom, 26 November 1991, § 59, Series A no. 216; Bladet Tromsø and Stensaas v. Norway [GC], no. 21980/93, § 59, ECHR 1999-II; and Flux v. Moldova (no. 6), no. 22824/04, § 24, 29 July 2008). Accordingly, journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see Von Hannover v. Germany, no. 59320/00, § 58, ECHR 2004-VI). In this respect, it is clear from the Court's case-law that the right to freedom of expression 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 the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society” (see, inter alia, Handyside v. the United Kingdom, 7 December 1976, § 49, Series A no. 24; and Nilsen and Johnsen v. Norway [GC], no. 23118/93, § 43, ECHR 1999-VIII). This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly. The need for any restrictions must be established convincingly (see, for example, Lingens v. Austria, 8 July 1986, § 41, Series A no. 103; Nilsen and Johnsen, cited above, § 43; and Tammer v. Estonia, no. 41205/98, § 59, ECHR 2001-I)."

Dina l-posizzjoni kif mehudha internazzjonalment qiegħda tissemma peress illi, fil-kaz odjern, jidher car illi l-kummenti kollha illi allegatament kien saru fil-konfront tal-kwerelant, kienu lkoll kummenti relatata mal-posizzjoni pubblika ta' l-istess kwerelant, dak iz-zmien Memrbu tal-Parliament, u illum il-gurnata Ministru tal-Gvern, u huma kollha kummenti li għandhom jitqiesu bħala accettabbli f'socjeta demokratika bħalma hija dik Maltija, fejn kullhadd għandu jkollu d-dritt illi jesprimi l-veduti tiegħu dwar agir ta' persuna fil-politika

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minghajr il-biza illi jkun ffaccjat b'azzjoni ta' libell, aktar u aktar, libell kriminali, illi ilu li gie abolit fid-dinja civilizzata ghal hafna snin, izda f'Malta ghadu eseitenti.

Abbazi tal-konsiderazzjonijiet fuq maghmulha u in vista ta' l-akkuzi kif migjuba kontra l-akkuzat, partikolarment il-periodu indikat fl-akkuzi, jigifieri f'Novembru 2010 u ix-xhur precendenti, u l-mezz allegatament utilzzat mill-akkuzat, ma jidher li ma ngabux provi sufficjenti sabiex l-akkuzat jintsab hati ta' l-akkuzi migjuba kontra tieghu.

Il-Qorti, ghal dawn il-motivi, taqta u tiddeciedi billi tillibera lill-akkuzat mill-akkuzi kollha migjuba kontra tieghu fuq nuqqas ta' provi.

< Sentenza Finali >

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