



MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta ta' l-20 ta' Novembru, 2014

Avviz Numru. 184/2012

Sylvana Debono
(ID 293564M)
vs

Alexander Farrugia
(ID 160878M)

Il-Qorti

Rat ir-rikors ipprezentat fit 28 ta' Mejju 2012 fejn ir-rikorrenti, filwaqt illi ghamlet referenza ghall artikolu "**Il-protezzjoni tal-ambjent u r-riforma tal-MEPA**" li deher fil-harga tat-Torca li gie ippubblikat fid 29 ta' April 2012 u miktub minn Mark Camilleri, sahqet lilil artikolu jaghmel allegazzjonijiet fil-konfront taghha illi hija qed tahdem mal-Partit Nazzjonalista sabiex jinghataw pjaciri mill-MEPA, liema allegazzjonijiet kienu libelluzi u malafamanti fil-konfront taghha stante illi kienu intizi sabiex itellfu r-reputazzjoni ta' l-istess rikorrenti.

Rat ir-risposta ta' l-intimat ipprezentat fit 28 ta' Settembru 2012 fejn huwa laqa' ghal dak lilu attribwit billi stqarr illi l-kitba kienet ta' interess pubbliku u osservazzjonijiet u kummenti fuq fatti filwaqt illi insista li d-dmir ta' l-editur huwa li jgharraf lill-qarrej filwaqt illi d-dritt tal-qarrej huwa li jkun mgharraf, liema principji kienu l-bazi tad-dritt ta' espressjoni hielsa.

Semghet ix-xhieda tar-rikorrenti **Sylvana Debono** mogthija fis 16 ta' Novembru 2012 flimkien ma' artikolu ippubblikat fil-harga tas-sit elettroniku 'maltastar.com' fil 25 ta' April 2012

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u li dwar l-allegazzjonijiet hemm maghmulha ssir referenza fl-artikolu meritu tal-kawza odjerna.

Semghet ix-xhieda ta' **Austin Walker**, fil-kapacita tieghu ta' Chairman tal-MEPA, moghtija fit 18 ta' Frar 2013.

Semghet ix-xhieda ta' l-intimat **Alexander Farrugia** moghtija fit 12 ta' Mejju 2014.

Semghet ix-xhieda ta' **Mark Camilleri**, li kien l-awtur ta' l-artikolu meritu tal-kawza odjerna, moghtija fit 12 ta' Mejju 2014.

Rat illi fil 11 ta' Lulju 2014, il-provi tal-partijiet gew maghluqa u l-kawza giet differita ghas-sottomissjonijiet tal-partijiet.

Rat illi fit 18 ta' Awissu 2014 ir-rikorrenti ippresentat in-nota ta' sottomissjonijiet taghha.

Rat illi fl-1 ta' Ottubru 2014 l-intimat ippresenta in-nota ta' sottomissjonijiet tieghu.

Rat illi fit 3 ta' Ottubru 2014 il-kawza giet differita ghas-sentenza.

Ikkunsidrat

Il-kawza odjerna tirrigwarda artikolu mitkub minn Mark Camilleri dwar il-protezzjoni ta' l-ambjent rurali Malti u dwar ir-riformi illi kienu qed isiru fil-MEPA intizi sabiex isahhah tali protezzjoni. Tali artikolu jikkummenta dwar il-hatra ta' Direttur tal-Protezzjoni tal-Ambjent tal-Awtorita' Maltija ghall-Ambjent u Ippjanar (MEPA), u filwaqt li jaghmel referenza ghall-problemi ta' nuqqas ta' infurzar da' parte tal-MEPA u certi decizjonijiet illi kienu ittiehdu dak iz-zmien li kien qajjmu kontroversja fil-qasam ta' l-ambjent, jghaddi biex jippubblika diversi mistoqsijiet illi huwa ghamel lill Petra Bianchi, li kienet id-Direttur fuq imsemmija, dwar il-fatti li dwarhom kien qieghed jikteb.

Fl-artikolu, waqt illi huwa kien qieghed jesprimi d-dizappunt tieghu ghal decizjoni mehudha fejn giet approvata bini ta' blokk ta' appartamenti u garaxxijiet gewwa Wied il-Ghasel, Mosta, huwa ghadha biex ghamel is-segwenti kumment dwar il-MEPA:

"Ghad hawn il-percezzjoni li l-MEPA xxaqleb aktar lejn l-interessi tal-izviluppatur milli lejn il-protezzjoni tal-ambjent. Sa llum ghadha ssir l-akkuza li l-MEPA tintuza mill-Gvern biex isiru l-pjaciri u, ftit ilu, s-sit maltastar.com allega li impejegata tal-MEPA, Sylvana debono, qed tahdem mal-Partit Nazzjonalista biex jinghataw dawn il-pjaciri."

Dana il-kumment jidher illi urta lir-rikorrenti, li wasslet sabiex tipprocedi gudizzjarjament kontra l-intimat, bhala editur tal-gazzetta fejn l-artikolu 'de quo' inkiteb.

Ikkunsidrat

Fix-xhieda taghha, ir-rikorrenti tikkontendi li, fiz-zmien meta gie ippublikat l-artikolu meritu tal-kawza odjerna, hija kienet Board Secretary tal-MEPA, u hija qatt ma kellha xi konnessjoni tal-Partit Nazzjonalista fix-xoghol taghha gewwa l-MEPA. Fix-xhieda ta' Austin Walker, dak iz-zmien Chairman tal-MEPA, huwa jistqarr illi l-involvement tar-rikorrenti kien biss li tamministra il-'Customer Care Service' tal-MEPA kif ukoll illi tgharraf lill-applikanti bl-ezitu ta' l-applikazzjoni taghhom. Huwa sahaq illi hija qatt ma kienet involuta fil-process tad-decizjoni

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izda kienet tkun presenti fil-laqgħat tal-Bord tal-MEPA bhala segretarja bil-ghan tiehu n-notamenti dwar dak li kien qed isir u li kien qed jigi deciz.

L-intimat, da parte tieghu, sahaq illi, bhala editur tal-gazzetta It-Torca, huwa għandu diversi opinjonisti, fosthom Mark Camilleri, u, fil-kaz odjern, huwa hass illi l-artikolu dwar il-MEPA kien soggett topiku għal dak iz-zmien, bħalma għadha sa llum, u wara li kkonstata illi dak li kien qed jinkiteb minn Camilleri kien riflessjoni ta' dak illi kien qiegħed jingħad u jigi rappurtat mill-media lokali dak iz-zmien, fehem illi kien opportun li l-artikolu jkun pubblikat.

L-opinjonista Mark Camilleri, da parte tieghu, sahaq illi fl-artikolu tieghu huwa semma percezzjonijiet u opinjonijiet li kienu qed jingħadu dwar ir-riforma illi kienet qed issir fil-MEPA u għamel referenza għal dak illi kien qiegħed jingħad, fosthom anke fuq is-sit elettroniku maltastar.com, fejn issemmiet ir-rikorrenti. Huwa sahaq illi l-allegazzjonijiet magħmulha maltastar.com qatt ma gew ikkontestati mir-rikorrenti u għalhekk kellu kull dritt illi jirrimarka u jikkummenta dwar affarjiet illi gew irraportati fuq il-media u mhux ikkontestati.

Ikkunsidrat

Fid-difiza tieghu, l-intimat, kif ukoll l-artikolist fix-xhieda tieghu, jagħmlu referenza għad-dritt tal-liberta' ta' l-espressjoni, u għalhekk ikun opportun illi issir referenza għall-posizzjoni mehudha mill-Qorti Ewropea tad-Drittijiet tal-Bniedem dwar tali dritt eseenzjali f'socjeta demokratika, bħalma hija dik Maltija.

Fil-kawza **Petrenco vs Moldova** deciza fit-30 March 2010, il-Qorti Ewropea tad-Drittijiet tal-Bniedem qalet is-segweni:

"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)."

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Il-kontenut ta' dak fuq spjegat jtkellem wahdu, u hija cara li l-posizzjoni mehudha mill-Qorti fuq imsemmija hija wahda fejn tiprotegi lill-gurnalist fil-qadi ta' dmirijietu peress illi tqis il-gurnalist bhala "*a public watchdog*" li ghandu l-obbligu illi jgharraf lill-qarrej dwar affarjiet ta' interess pubbliku.

Ikkunsidrat

Ghalkemm ma tidhirx cament indikata x'inhija l-linja ta' difiza ta' l-intimat, prassi illi jidher illi qiegħda tigi adoperata tul dawn l-ahhar snin u li certament ma tghinx lill-Qorti lill-konsiderazzjonijiet tagħha, jidher illi d-difiza principali tiegħu, kif korrettement irrileva l-abblu difensur tar-rikorrenti, kienet dik tal- "*fair comment*".

Ikun għalhekk opportun illi l-Qorti tagħmel evalwazzjoni hafifa dwar il-punti ewlienin li jirregolaw id-difiza tal- "*fair comment*".

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 **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 u dwarha qal is-segwenti:-

"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 għamel 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.

Ikkunsidrat

Abbazi tal-veduti kif fuq enuncjati minn Qrati li l-Qrati Maltin regolarment jaghmlu referenza ghalihom, 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"* - Il-Qorti ma ghandha ebda dubju, wara illi qrat il-kontenut ta' l-artikolu kollu, li l-kliem li intuzaw mill-artikolist Camilleri kienu kummenti tieghu dwar il-percezzjonijiet u relatajiet li kien hemm, u ghad hemm, fuq il-MEPA u t-tmexxija taghhom.

Kif jghid il-**Gatley on Libel and Slander** (Sweet & Maxwell (London), 1981 fuq 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).

- (ii) *"the comment was on facts"* - jidher, mill-fatt kif prodotti, illi ghalkemm huwa minnu li l-kumment illi sar kien ibbazat fuq percezzjonijiet u opinjonijiet illi l-artikolist kien qieghed jasal ghalihom l-artikolist fil-mument tal-pubblikazzjoni, dak allegat dwar ir-rikorrent ma kienx fatt li seta jigi kkorroborat. Madanakollu, kif jirrizulta anke mir-risposti illi Petra Bianchi kienet tat ghad-domandi ta' l-artikolist, kien minnu li kien hemm *"thassib tal-pubbliku dwar l-ambjent kif ukoll percezzjoni taghhom fir-rigward tal-awtorita' u l-funzjonijiet taghha."* Ghalhekk huwa minnu li l-percezzjonijiet li wasslu lill-artikolist jikteb il-fatti meritu tal-kawza odjerna kienu korretti. Tali fatt, abbinat mal-fatt illi l-allegazzjonijiet illi dwarhom saret il-kawza odjerna kienu attwalment rizultat ta' publikazzjoni li dehret ftit jiem qabel fuq is-sit elettroniku 'maltastar.com' u li ma gew bl-ebda mod michuda pubblikament mill-istess rikorrenti sakemm l-artikolist ghamel il-pubblikazzjoni meritu tal-kawza odjerna, jwasslu sabiex dawk il-percezzjonijiet jistghu jitqiesu bhala "an inference of fact", bhalma jghid il-Gatley u ghalhekk "justified" kif jghid Bingham LJ. Dana qieghed jinghad ghax il-kumment ta' l-artikolist kien ibbazat fuq il-percezzjonijiet u ir-rikorrenti, meta saru allegazzjonijiet fil-konfront taghha minn terzi, naqsset milli tikkontestahom pubblikament, bir-rizultat illi, filwaqt li sahhew il-percezzjoni li kienet qed tinhass dak iz-zmien, setghu jigu kkunsidrati bhala fatti li dwarhom wiehed seta jikkummenta. In-nuqqas tar-rikorrenti sabiex tikkontesta dak illi hija tikkontendi li ma kienx minnu wassal sabiex wiehed jikkonkludi li kienu ammessi u, ghalhekk, kienu fatti li dwarhom seta jikkummenta.

- (iii) *"the facts commented on constituted a matter of public interest"* - ma hemm assolutament ebda dubju illi l-protezzjoni ta' l-ambjent u ir-riforma fi hdan il-

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MEPA bil-ghan illi l-protezzjoni ta' l-ambjent jigi imsahhah huwa ta' interess pubbliku u kien jisthoqq li wiehed jikkummenta u jikteb dwaru.

- (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;"* - Kif gia spjegat il-Qorti aktar 'l fuq, il-fatt li allegazzjoni bhal dik kontra ir-rikorrenti ma kienetx kkontestata minnha f'waqtha wassal sabiex wiehed jikkonkludi li kienu fatti setghu kienu veri. Il-fatt illi r-rikorrenti ma tikkummentax biex tichad allegazzjoniet illi qed isiru kontriha ma ghandhiex sussegwentement ixekkel lill terzi milli jikkumentaw dwarha bhala fatt. Kienet ghazla unikament tar-rikorrenti illi ma tichadx dak allegat mis-sit elettroniku 'maltastar.com', u ghalhekk, la darba hija ma kkontestathomx, huwa gustifikabbli illi wiehed jikkummenta dwarhom.
- (v) *"the comment represented the defendant's honest opinion."* - Huwa car illi l-artikolist, meta ghamel il-kummenti illi dwarhom hassitha aggravata ir-rikorrenti, kellu fi hsiebu illi jikkummenta dwar is-sitwazzjoni negattiva esistenti fl-infurzar u protezzjoni tal-ambjent da parte tal-MEPA u ma hemm ebda dubju li l-kumment tieghu kien intiz unikament ghal hekk u mhux biex jaghmel hsara lir-rikorrenti, kif hija tikkontendi.

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."

Tenut kont tal-konsiderazzjonijiet kollha hawn fuq elenkati kif ukoll wara illi qrat bir-reqqa l-interjiet ta' l-artikolu li fih kien hemm il-kliem li r-rikorrenti hassitha malafamata bihom, il-Qorti tqis li tali kliem ma kienux intizi sabiex itellef ir-reputazzjoni tar-rikorrenti, u ghalhekk ma kienux libelluzi

Konkluzjoni

Wara illi rat il-provi kollha prodotti quddiemha

Wara illi rat is-sottomissjonijiet bil-miktub ta' l-abbli difensuri tal-partijiet

Tghaddi biex taqta u tiddeciedi l-kaz billi

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

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Tichad t-talba attrici u tiddikjara illi l-kliem li intqalu fil-konfront tar-rikorrenti fl-artikolu intitolat "*Il-protezzjoni tal-ambjent u r-riforma tal-MEPA*" li deher fil-harga tal-gazzetta 'It-Torca' tad 29 ta' April 2012, li tieghu l-intimat kien l-editur u miktub minn Mark Camilleri, ma kienux libelluzi u malafamanti fil-konfront ta' l-istess rikorrenti.

Spejjez tal-proceduri odjerni ikunu a kariku tar-rikorrenti.

< Sentenza Finali >

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