MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta ta' l-1 ta' Dicembru, 2014

Avviz Numru. 171/2013

Rikors Numru 171/13 FDP

fl-ismijet

Gino Cauchi
(ID 97868M)

vs

Dr Chris Said (ID 18970G) u Reno Bugeja (ID 552755M)

Il-Qorti

Rat ir-rikors promotur ippresentat fl-14 ta' Gunju 2013 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-programm TVAM illi kien imxandar fis 6 ta' Gunju 2013, li ghalih Reno Bugeja kien responsabbli bhala editur u fejn l-intimat Dr Chris Said, li kien attenda bhala mistieden, ghamel allegazzjonjiet fil-konfront tar-rikorrent meta huwa allega li r-rikorrent kien impjegat mal-Gvern u fl-istess hin CEO tal-Partit Laburista, sahaq illi tali allegazzjonijiet kienu foloz u malafamanti fil-konfront tieghu u kienu intizi sabiex joffendu l-unur u l-fama tieghu u jtellfulu r-reputazzjoni gieh u kredibilta' tieghu. Ghalhekk ir-rikorrent talab lill-Qorti tiddikjara tali allegazzjonjiet bhala malafamanti u tikkundannah ihallas danni.

Rat ir-risposta ta' l-intimat Dr Chris Said ippresentata fit-3 ta' Lulju 2013 fejn insista illi l-kliem imxandra kienu kummenti dwar fatti sostanzjalment korretti u dwar persuna pubblika li mhux biss huma permessibbli izda protetti kemm mill-Kostituzzjoni kif ukoll mill-Konvenzjoni Ewropeja ddwar id-Drittijiet tal-Bniedem.

Rat ir-risposta ta' l-intimat Reno Bugeja ippresentati fil-11 ta' Lulju 2013 fejn sahaq illi x-xandira ma kienetx libelluza u anke kieku kkontjeniet zball ta' fatt, ma kienux tali illi jikkostitwixxu ingurja. Sahaq ukoll illi x-xandira kienet wahda diretta u ghalhekk bhala Editur responsabbli ghall-programm ftit li xejn seta jezercita kontroll immedjat.

Semghet ix-xhieda ta' **Gino Cauchi** moghtija fit 28 ta' Ottubru 2013 u rat id-dokumentazzjoni minnu ppresentata, partikolarment it-traskrizzjoni ta' dik il-parti tal-programm illi fih huwa hassu malafamat.

Semghet ix-xhieda ta' **Dr Chris Said** moghtija fl-14 ta' Frar 2014 u rat id-dokument minnu esebit, ossija '*screen shot*' mehudha mis-sistema kompterizzata tal-Gvern fejn huwa indikat illi r-rikorrent jahdem fil "*Office of the Prime Minister*" u l-ufficju li fih kien jahdem kien "*Prime Minister Secretariat*".

Semghet ix-xhieda ta' **Reno Bugeja** mogthija fl-24 ta' Marzu 2014.

Rat illi fid 19 ta' Mejju 2014 il-partjiet iddikjaraw illi ma kellhomx aktar provi x'jippresentaw u fit-13 ta' Ottubru 2014, l-abli difensuri tal-partijiet ittrattaw il-kaz u wara l-kawza giet differita ghallum ghas-sentenza.

Ikkunsidrat

Il-kawza odjerna tirrigwarda kummenti illi ghamel Dr Chris Said f'programm imtella fuq TVAM fejn Dr Said kien presenti fil-kwalita' tieghu ta' Segretarju Generali tal-Partit Nazzjonalista filwaqt illi kien hemm ukoll mistieden l-Perit Daniel Micallef fil-kapacita' tieghu ta' President tal-Partit Laburista. Is-suggett illi kien qieghed jigi dibattut fuq dana il-progamm li kien imxandar '*live on air*' kienu diversi suggetti relatati mal-politika u il-partiti politici.

Jirrizulta illi waqt id-diskussjoni, f'mument minnhom, l-intimat Said allega illi ir-rikorrent, li kien ukoll CEO tal-Partit Laburista, kien impjegat gewwa l-Ufficju tal-Prim Ministru u kien anke wiehed mill-ufficjali ta' l-Ufficju tal-Prim Ministru, u dana meta kien ghadu CEO tal-Partit Laburista.

Jirrizulta illi, meta mistoqsi mill-mistiedna kif ukoll il-presentaturi jekk kienx cert minn tali fatt, Said baqa' jinsisti fuq tali allegazzjonijiet u ghamel referenza ghal dak illi kien deher fil-media ftit qabel, li kienet screen shot li kienet turi li ir-rikorrent kien indikat fis-sistema komputerizzata tal-Gvern bhala ufficjal tas-Segretarjat tal-Prim Ministru.

Jirrizulta illi ir-rikorrent, meta sar jaf b'tali allegazzjonjiet illi kienu qed isirulu '*on air*', ghamel tentattiv sabiex minnufih jinterveni fil-programm sabiex jirribatti ghal dak lilu attribwit, izda ma thalliex jaghmel dan.

Ikkunsidrat

Jirrizulta, mix-xhieda tar-rikorrent, illi fil-mument illi sar l-intervent televiziv, ossija fis 6 ta' Gunju 2013, ir-rikorrent kien CEO tal-Partit Laburista, waqt illi qabel l-elezzjoni tal-2013 huwa kien jahdem fl-ufficju tal-komuniazzjoni tal-Partit Laburista.

Jirrizulta, mix-xhieda tar-rikorrent, illi fil-legislazzjoni li intemmet bl-Elezzjoni Generali ta' Marzu 2013, huwa kien Membru tal-Parliament, kariga illi huwa ma regghax gie elett ghaliha fl-elezzjoni tas-sena 2013.

Jirrizulta, mix-xhieda tar-rikorrent, illi wara illi l-Partit Laburista kien elett fil-Gvern fl-elezzjoni tas-sena 2013, il-Prim Ministru kien talab lir-rikorrent flimkien ma' ftit nies ohra, sabiex ghal ftit zmien, jghinu fl-Ufficcju tal-Prim Ministru peress illi kienu sabu sitwazzjoni ili kienet tenhtieg xoghol "*hands on deck*". Di fatti, ir-rikorrent jistqarr illi l-Prim Ministru kien talbu jghinu fl-amministrazzjoni tal-Ufficcju tal-Prim Ministru sakemm is-sitwazzjoni tigi rizolta.

Jirrizulta, mix-xhieda tar-rikorrent, illi huwa baqa' jahdem gewwa Kastilja ghal madwar tlett gimghat, imma dana mhux bhala "impjegat bi hlas" u ma kellu ebda tip ta' kredenzjali sabiex jahdem fl-Ufficcju tal-Prim Ministru.

Ir-rikorrent jinsisti illi huwa hassu offiz mill-kliem illi qal l-intimat Said peress illi kienet qed tinghata impressjoni illi kien qieghed jithallas xi flus mill-Gvern meta attwalment ma kien qieghed jithallas ebda flus. Hassu aggravat ukoll mill-fatt illi, ghalkemm l-intimat Said kellu l-opportunita' jaghmel retifika fil-programm stess, huwa ma ghamilihiex.

Jirrizulta, madanakollu, illi ir-rikorrent, fil-mument illi sema dawna l-allegazzjonjiet, cempel lill-PBS u qabbduh ma' Jordan Degiorgio, illi kienet il-producer tal-programm, u meta talab sabiex jintervjeni, huwa gie mgharraf illi ma kellu ebda dritt jintervjeni fil-programm peress illi ma kellhiex l-permess tal-editur ta' l-istazzjoni.

B'referenza ghal fatt illi d-dettalji tieghu kienu fis-sistema komputerizzata tal-Gvern, ir-rikorrent sahaq illi peress li kien Membru tal-Parlament fil-legislatura precedenti, meta id-Dipartiment ta' l-Informazzjoni harget lista tal-persuni illi kienu fl-ufficju tal-Prim Ministru, ghamlu uzu anke mill-'email address' illi huwa kellu precendentement bhala Membru tal-Parlament.

Ikkunsidrat

Jirrizulta, mix-xhieda ta' l-intimat Said, illi huwa kien stqarr fil-programm illi ufficjal tal-Partit Laburista, jigifieri r-rikorrent Gino Cauchi, kien indikat bhala impjegat tal-Ufficju tal-Prim Ministru u meta gie affrontat fuq tali allegazzjoni minn Daniel Micallef, huwa sahaq illi dana kien jirrizulta mill-website ta' l-Ufficcju tal-Prim Ministru.

Jirrizulta, skond dokument esebit mill-istess intimat Said, li skond informazzjoni illi huwa kellu fil-pussess tieghu u li kienu mehudha mis-sistema komputerizzata tal-Gvern, kien qieghed jigi indikat illi r-rikorrent kien registrat bhala li qed mal- '***Company***' indikata bhala "*Office of the Prim Minister*" u bhala '***Office***' kellu indikat "*Prim Minister Secretariat*".

Jirrizulta, skond ix-xhieda ta' l-istess Said, illi dina l-informazzjoni kienet sussegwentement imnehhija minn fuq is-sit elettroniku tal-Gvern.

L-intimat Said, li huwa Membru tal-Parlament u kien Segretarju Parliamentari u Ministru fil-legislatura precedenti, fejn ir-rikorrent kien anke Membru tal-Parlament, sahaq illi huwa kien ghamel hames snin jahdem fl-Ufficcju tal-Prim Ministru u, ghalhekk, kien jaf ben tajjeb bil-proceduri illi kienu jigu adottati fl-Ufficcju u fis-sistema komputerizzata tal-Gvern.

L-intimat sahaq illi r-rikorrent, bhala Membru tal-Parlament, kellu d-dettalji tieghu fis-sistema komputerizzata tal-Gvern, izda tali informazzjoni kellhom jindikaw illi kien abbinat mal-'House of Representatives' u mhux mal-'Office of the Prim Minister', kif kien jindika d-dokument illi dwaru kien gia a korrent u li kopja tieghu huwa kien ottjena fizikament granet wara illi ghamel il-kummenti meritu tal-kawza odjerna, u dana wara li gie mgharraf minn Reno Bugeja li ir-rikorrent kien qieghed joggezzjona ghal dak li kien qal.

Ikkunsidrat

Jirrizulta, mix-xhieda ta' Reno Bugeja, illi dakinhar li kien qed jittella l-programm, huwa kien ghadu sejjer lejn ix-xoghol meta cempillu persuna resposabbli mill-produzzjoni tal-programm TVAM u talbu direzzjoni dwar rikjesta li kienet qed issir minn Gino Cauchi biex jirribatti allegazzjonijiet fuqu 'live on air'.

Jirrizulta illi Bugeja dak il-mument infurmah illi peress illi ma kienx jaf bil-fatti kollha u x'intqal, ma kienx f'pusizzjoni jawtorizzah illi jhalli lir-rikorrent jintervjeni fil-programm abbazi tad-dritt ta' replika li l-istess rikorrent kellu.

Jirrizulta illi sussegwentement, wara illi l-intimat dahal fl-ufficcji, u dana wara li kien gia spicca l-programm, huwa ha konjizzjoni ta' dak kollu illi kien intqal u gharraf lir-rikorrent illi kellu dritt jirrepplika ghal dak allegat fuqu izzda dana gharrfu illi kien qieghed jikkonsulta ma' l-avukat tieghu.

Il-Qorti ma tistax ma tosservax illi meta jkun hemm progamm li jittella '*live on air*' l-ahjar dritt ta' replika hija dik illi tinghata dak il-hin stess u mhux replika illi tinghata aktar tard. Madanakollu, l-intimat kellu kull dritt illi jevalwa l-fatti kollha, la darba ma kienx presenti personalment meta inghataw tali kummenti, u kellu dritt illi jaghti dritt ta' replika lir-rikorrent fil-programm sussegwenti, liema dritt jidher, izda, illi r-rikorrent ghazel li ma jaghmilx uzu minnu.

Ikkunsidrat

Id-difiza imressqa mill-intimati hija intrinsikament ibbazata fuq l-argumentazzjoni illi l-kumment li sar kien jekwivali ghal "fair comment" u ghalhekk kien accettabbli fis-socjeta demokratika taghna.

Din il-Qorti gia kellha l-opportnita’ f' 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. U ghalhekk, issir referenza ghall-konsiderazzjoni magmulha f'tali decizjoni.

Madankollu, ikun opportun illi jigu indikat certi principji bazilari li jirregolaw tali difiza importanti fil-qasam tal-liberta' ta' l-espressjoni.

Dwar il-livel ta' kritika li politiku tista ssir lill-persuna politika, 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 abbracjata mill-Qorti Maltin, stabbiliet principji ferm aktar liberali fil-konfront tal-politici mill-indivdwu 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.*

Dana il-livell ta' kritika gie aktar dettaljat fid-decizjoni tal-Qorti Ewropea ghad-Drittijiet tal-Bniedem fil-kawza **Chauvy and Others vs France** deciza fid 29 ta’ Gunju 2004, fejn gie stabbilit 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 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.*

Apparti minn hekk, kif din il-Qorti gia kellha l-opportunita' illi tirrimarka fid-decizjoni taghha fl-ismijet '**Jesmond Mugliette vs Dr Alfred Sant**' deciza fl-10 ta' Marzu 2013:

> *... wasal il-mument illi tali regola titwessa aktar fis-sens illi meta jkun hemm dibattitu politiku ghaddej bejn politici, tali livell ta’ kritika ghadha 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 stimulata 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 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.*

Ikkunsidrat

Fil-kaz odjern, ir-rikorrent qieghed jilmenta li huwa hassu malafamat mill-allegazzjoni illi ghamel l-intimat Said meta dana qal illi l-istesss rikorrent kien CEO tal-Partit Laburista kif ukoll impjegat ta' l-Ufficcju tal-Prim MInistru.

Jirrizulta mill-provi prodotti illi, wara l-elezzjoni tal-10 ta' Marzu 2013, huwa kien intalab mill-Prim Ministru sabiex jassistih fl-Ufficcju tal-Prim Ministru sabiex dana jigi ri-organizzat wara it-tibdil fl-Amministrazzjoni Gvern, liema rikjesta huwa laqa' u ghamel madwar tlett gimghat jassisti lill-Prim Ministru fis-Segretarjat tieghu, izda minghajr hlas.

Jirrizulta ukoll mill-provi illi r-rikorrent kien is-CEO tal-Partit Laburista fil-mument illi huwa assista lill-Prim Ministru u ufficcju tieghu.

Jirrizulta, finalment, minn dokumentazzjoni prodotta mill-intimat Said, illi ir-rikorrent kellu d-dettalji personali tieghu u l-email address tieghu assenjat mal-Ufficcju tal-Prim Ministru u bhala operanti fis-Segretarjat Privat ta' l-istess Prim Ministru.

Ikkunsidrat

Il-Qorti ma ghandha ebda raguni tiddubita lir-rikorrent meta huwa stqarr illi huwa gie mitlub mill-Prim Ministru sabiex jassistieh fir-riorganizazzjoni tal-ufficjju tal-Prim Ministru peress illi tifhem illi, meta tinbidel amministrazzjoni, ikun hemm periodu ta' ri-organizazzjoni illi ghaliha jkun mehtieg illi persuni ta' fiducja jassistu lill min ikun gie moghti l-inkarigu jiggverna bil-ghan illi l-Gvern il-gdid ikun jista jqum fuq saqajh mill-aktar fis possibbli.

Il-Qorti ukoll ma ghandha ebda raguni tiddubita illi r-rikorrent ghamel tali servizz minghajr hlas u ghax mitlub jaghmel hekk mill-Prim Ministru.

Il-Qorti, madanakollu, ma tistax ma tosservax illi l-allegazzjonijiet li ghamel l-intimat Said u li dwarhom ir-rikorrent hassu malafamat huwa bbazati fuq fatti sostanzjalment korretti peress illi bbazati minn informazzjoni li kellu fil-pussess tieghu l-istess Said fil-mument li qalhom u li kienu jirrizultawlu mis-sistema komputerizzata tal-Gvern.

Il-Qorti tosserva ukoll illi ghalkemm ma sar ebda prova definittiva dwar il-veracita' tad-dokument li fuqu l-intimat Said kien qieghed jibbaza l-allegazzjoni tieghu, anke in vista tal-fatt illi d-dettalji sussgwentement tnehhew mis-sistema komputerizzata, hemm bizzejjed provi korrobativi li juru illi kien minnu li ghal zmien ir-rikorrent kien qieghed jahdem fl-Ufficcju tal-Prim Ministru, kif del resto ammess mir-rikorrenti stess.

Il-Qorti, finalment, ghal darba ohra, terggha tirrepeti dak illi gia kellha l-okkazzjoni tishaq f'sentenzi precedenti taghha, inkluz dawk fuq imsemmija ossija illi, meta persuna taghzel illi tidhol fil-politika, hija qieghda taghzel illi tigi suggettata ghal skrutiju akbar minn dak ta' cittadin komuni. Tali skrutinju jwassal sabiex kwalsiasi azzjoni tieghu tista tkun soggetta ghall-kummenti, kemm privati kif ukoll pubblici. Ghalhekk il-politiku ghandu jkun aktar tolleranti ghall-kummenti illi jsiru fuq l-operat tieghu.

Mill-banda l-ohra, politiku ghandu d-dover illi jikkummenta dwar azzjonijiet illi persuna politika ohra qieghda taghmel u jkun ghajb ghas-sistema demokratika Maltija meta tali dritt jigi prekluz. Il-Politiku qieghed hemm sabiex iservi lic-cittadin u ghalhekk ghandu jkun il-vuci tac-cittadin fuq kwalsiasi kwistjoni illi tista tirrigwarda l-operat ta' persuna pubblika bhalma huwa ir-rikorrent.

Huwa ghalhekk illi l-Qorti thoss illi wasal iz-zmien illi kummenti dwar politici illi jsiru waqt dibattiti ta' natura politika bejn politici ghandhom jigu accettati ta' li huma, sakemm ma tigix ippruvat l-malizja, kif jishaq Lord Phillips fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliza fl 1 ta' Dicembru 2010, u ghalhekk ghandhom jigu protetti bhala kummenti dwar l-operat ta' persuna politika accettabbli f'socjeta demokratika illi thaddan id-dritt tal-liberta' ta' l-espressjoni.

Del resto, kif sahqet il-Qorti Europeja tad-Drittijiet tal-Bniedem fil-kawza **Hrico vs Slovakia** deciza fl-20 ta' Lulju 2004 (Para 40 (g)):

> *There is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on questions of public interest (see Sürek v. Turkey (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV). Moreover, the limits of acceptable criticism are wider as regards a public figure, such as a politician, than as regards a private individual. Unlike the latter, the former inevitably and*

knowingly lays himself open to close scrutiny of his words and deeds by journalists and the public at large, and he must consequently display a greater degree of tolerance (see Lingens v. Austria, judgment of 8 July 1986, Series A no. 103, p. 26, § 42, or Incal v. Turkey, judgment of 9 June 1998, Reports 1998-IV, p. 1567, § 54).

Konkluzjoni

Il-Qorti

Wara illi qieset il-provi kollha prodotti quddiem il-Qorti u semghet ix-xhieda

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa' l-eccezzjonijiet kollha ta' l-intimat Dr Chris Said u Reno Bugeja, u ghalhekk

Tichad it-talbiet attrici

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

< Sentenza Finali >

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