



MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta tat-12 ta' Marzu, 2015

Avviz Numru. 74/2013

Carmelo sive Charles Foca

(ID 462371M)

vs

Steven Mallia (ID 391671M) u Patrick Cooke

Il-Qorti:-

Kopja Informali ta' Sentenza

Rat ir-rikors ippresentat fit-13 ta' Marzu 2013 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-artikolu intitolat "Private Terrace built at Victoria Lines" u ir-ritratti fih stampati, u ppubblikat fil-harga ta' The Times illi harget fit 18 ta' Frar 2013, talba lill-Qorti tiddikjara illi tali artikolu kien libelluz u malafamanti fil-konfront tieghu u li kellu l-iskop li jtellef jew inaqqas ir-reputazzjoni tar-rikorrenti u ghalhekk tikkundanna lill-istess intimati ihallsuh danni.

Rat it-twegiba ippresentata fid 9 ta' April 2013 fejn, in linea preliminari, jilqghu ghal dak allegat billi jshqu illi l-pubblikazzjoni meritu tal-kawza odjerna ma tistax tkun libelluz fil-konfront ta' Carmelo sive Charles Foca peress illi fl-istess publikazzjoni huwa ma huwiex identifikabli. Ghalhekk, fil-meritu, l-intimat sahqu illi t-talbiet attrici kellhom jigi michuda bl-ispejjez.

Rat illi fis 26 ta' April 2013, ir-rikorrenti iddikjara illi l-malafama hija dovuta ghal fatt illi gie allegat illi kien hemm theddid da' parte tal-klijent tieghu kif ukoll gie riprodott ritratt tal-fond illi huwa ghandu.

Semghet ix-xhieda u kontro ezami ta' **Carmelo Foca** moghtija fl-24 ta' Mejju 2013.

Rat l-affidavit ta' **Mariella Foca** ippresentat fil 21 ta' Ottubru 2013.

Semghet ix-xhieda ulterjuri ta' **Carmelo Foca** moghtija fil 21 ta' Ottubru 2013.

Semghet ix-xhieda ta' **Noel Spiteri** moghtija fil 21 ta' Ottubru 2013.

Semghet ix-xhieda ta' **Sergio Carbonaro** moghtija fil 21 ta' Ottubru 2013.

Rat illi fis-seduta tal-21 ta' Ottubru 2013 ir-rikorrenti iddikjara illi ma kellux aktar provi x'jipresenta.

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Semghet ix-xhieda ta' **Patrick Cooke** moghtija fid 29 ta' Novembru 2013.

Semghet il-kontro ezami ta' **Mariella Foca** moghtija fis 17 ta' Marzu 2014.

Rat l-affidavit ulterjuri ta' **Patrick Cooke** ippresentat fis 17 ta' Marzu 2014.

Semghet ix-xhieda ta' **Oliver Magro**, rapprezentant tal-MEPA, moghtija fid 19 ta' Mejju 2014.

Semghet ix-xhieda ta' **Eman Schembri**, bhala ex-Direttur Generali tad-Divizjoni tal-propjeta tal-Gvern fi hdan id-Dipartiment ta' l-Artijiet, moghtija fis 27 ta' Novembru 2014.

Rat illi fis 16 ta' Frar 2015 l-intimati iddikjaraw illi ma kellhomx aktar provi.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet u wara iddifferit il-kawza ghallum ghas-sentenza.

Ikkunsidrat

Il-kawza odjerna tirrigwarda artikolu illi deher fil-faccata tal-gazzetta The Times bit-titolu "Private terrace built at Victoria Lines" u li kompla fil-pagna erbgha ta' l-istess gurnal bit-titolu 'Two enforcement notices in force for illegal structure', u li jirrigwarda struttura illegali illi inbniet fuq parti mis-sit storiku u fil-kampanja maghruf bhala 'Victoria Lines'.

L-artikolu illi dwaru qed jilmenta ir-rikorrent kien jghid is-segwenti:

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Tourists at one of Malta's prime beauty spots had an ugly experience recently when they were threatened for taking photos of an illegal structure that remains in place despite two enforcement notices.

The group came across a building constructed within the historic Victoria Lines while walking in the countryside near to Rabat.

According to the man who was leading the group of foreigners, they were warned by a person at the building to stop taking photos and not to get too close.

The group leader, a frequent visitor to Malta who did not wish to be identified out of fear of reprisals, said part of the fortification had been converted into a private terrace area with concrete walls and a gate added to the structure.

Victoria Lines are "a national treasure for all of us to enjoy, not something to be turned into a private barbecue area to be used and abused", the man said.

Built by the British in the late 19th century, the Victoria Lines are defensive fortifications dividing the north of Malta from the south.

When contacted, the Malta Environment and Planning Authority confirmed that two enforcement notices had been issued for illegal structures at this location.

Notice EC/262/96 was issued in March 1996 for the illegal construction of an open terrace, while EC/400/11 was issued in August 2011 for the fixing of a steel gate and the construction of a low limestone wall without planning permission.

The case status of the former was listed as "direct action notification letter sent" on the Mepa website, while the status of the latter was "pending at enforcement officer".

As well as the owner/occupier of the illegal structures, the Commissioner of Land was listed as a contravener in EC/262/96 and the Government Property Division was listed as a contravener in EC/400/11.

This land is owned by the Government and leased to the occupier by the division.

Astrid Vella from environmental NGO Flimkien għal Ambjent Aħjar said many campaigners had given up hope the authorities would protect the Victoria Lines from abuse.

"This area, which used to be kept in pristine condition under the British, became a free-for-all some years ago, with people first occupying sites and ex-army structures, then expanding beyond belief," she said.

Illegal structures became a hot issue in the election campaign recently when the Nationalist Party pledged an amnesty for some building irregularities pre-dating 2008 that did not affect the rights of neighbours.

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Concessions on minor development irregularities were granted recently by the planning authority through a legal notice that mirrored the PN's pledge.

L-artikolu, fil-pagna erbgha, kellu jkollu wkoll zewgt ritratti ippubblikat, wahda li tura 'pill box' fuq il-Victoria Lines u f'kaxxa zghira, ritratt aktar mill-vicin ta' binja f'din iz-zona.

Jirrizulta illi fil-25 ta' Jannar 2013, il-gurnal The Times ircieva ilment minghand persuna fejn dina stqarret illi waqt li kienet sejjra mixja fil-kampanja ma' grupp ta' hbieb barranin gewwa Victoria Lines, huma setghu josservaw illi kien hemm parti mill-forifikazzjoni illi kienet giet maghluqa b'hajt u maghluqa ghal pubbliku permezz ta' xatba, u il-bini gewwa tal- zona kienet qed tintuza minn persuna privata illi sahsitra bena BBQ u li qalilhom biex jitolqu 'l hinn u ma jiehdux ritratti meta huwa rahom fil-vicin tal-propjeta' minnu okkupata. Tali persuna ghaddiet ukoll numru ta' ritratti lill-gazzetta.

Jirrizulta illi fit 28 ta' Jannar 2013, dana l-ilment jidher illi gie rrapportat fil-harga elettronika tal-Maltastar.com u uhud mir-ritratti gew hemm ippubblikati.

Jirrizulta illi fl-1 ta' Frar 2013, l-intimat Cooke, illi kien beda jinvestiga l-ilment illi kien dahal ftit jiem qabel, ikkomunika ma' rapprezentant tal-MEPA illi gharrfu li f'Marzu tas-sena 1996, il-MEPA kienet harget Enforcement Notice kontra id-Dipartiment ta' l-Artijiet u okkupanti mhux maghrufa. Tali rapprezentant kompli jgharrfu illi susegwentement, f'Awissu 2011, regghet harget Enforcement Notice ohra kontra il-Government Property Division u okkupanti mhux maghrufa ghall-izvilupp illegali illi kien hemm.

Jirrizulta illi fit 8 ta' Frar 2013, l-intimat Cooke gie infurmat minn rapprezentant tal-Government Property Division illi, wara li ghamlu stharrig fuq l-informazzjoni illi ghaddielhom l-intimat Cooke, setghu jindividwaw il-lokalita u stqarrew is-segweni:

"It transpires that tenement is leased however current tenant has illegally surrounded the property with a wall and iron gate for which an eviction order has already been issued and is being followed for further enforcement action."

Jirrizulta illi, sussegwentement, fil-11 ta' Frar 2013, l-intimat Patrick Cooke, irceva ilment iehor, minghand persuna barranija ohra, fejn wera d-disgust tieghu lejn il-fatt illi gawrha

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nazzjonali bhalma kienet dik ta' Victoria Lines setghet tigi soggetta ghall-azzjonjiet ta' persuni illi abbuzivament jiehdu porzjonijiet taghha ghall-uzu personali taghhom u sahasitra jibnu BBQ's u jipprivaw il-pubbliku minn art pubbliku minghajr ebda azzjoni pubblika ma tittiehed.

Jirrizulta illi, wara illi l-intimat Cooke kien ghamel dana l-istharrig kollu, huwa ghadha biex jippubblika l-artikolu meritu tal-kawza odjerna.

Jirrizulta illi, fis 27 ta' Frar 2013, bhala 'follow up' ghall-artikolu meritu tal-kwaza odjerna, l-intimat irrapporta li l-Awtoritajiet kienu finalment ghaddew biex jattwaw l-Enforcement Notice illi kienet ilha pendent ghal sbatax-il sena u di fatti, f'artikolu intitolat '**Illegal Victoria Lines walls and terrace are demolished**', huwa ghadha biex jirrapporta s-segwenti:

For years, squatters had gone unpunished for reserving a beauty spot at the historic Victoria Lines all for themselves.

Today's action sends a strong message that people cannot take the law into their own hands

But the peace and quiet of the area known as Habel Bies was shattered yesterday morning by the noise of heavy machinery, as the law finally caught up with the offenders.

Despite being issued with an enforcement order in 1996 for a private terrace built alongside a hut above the fortifications, a squatter had continued using the hut and terrace undisturbed for 17 years. Next door, a tenant who rented a building from the Government had received an enforcement order in 2011 for adding a wall, gate and paving stones without planning permission to create his own garden.

Tourists alerted The Times to the ongoing illegalities and the authorities were finally spurred into action when an article was published the front page on February 18.

The Environment and Planning Authority, which issued the enforcement orders, threatened to take action against the Government Property Department, as owner of the land and buildings, unless the illegalities were removed. Yesterday, contactors moved in to demolish the illegal walls, gate, paving and terrace using a mechanical excavator and manual tools.

The tenant who rented the building through the department will be able to continue doing so but cannot prevent the public from accessing the land.

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However, the hut has been repossessed by the department as the squatter was using it illegally. Neither the tenant nor the squatter were at the site when the structures were demolished in the presence of three Administrative Law Enforcement officers and the media.

The department will attempt to recover the costs of yesterday's demolition from the occupiers, who were given one week's notice of the impending action.

A Mepa spokesman said the authorities encouraged offenders to rectify building illegalities themselves before action was taken.

"Direct action is a last resort as it is a financial burden and it sometimes takes years to recover the costs," he said.

New daily fines and penalties introduced by Mepa last year were proving to be an effective deterrent against abuse and there had been a steady improvement in contraveners correcting their own illegalities, he said.

"Today's action sends a strong message that people cannot take the law into their own hands. Victoria Lines is an important site of touristic and cultural importance that should not be abused," the spokesman said.

Jirrizulta illi sussegwentement, ir-rikorrent, fit 13 ta' Marzu 2013, rizultat ta' dawna l-izviluppi kollha, ir-rikorrent nieda l-proceduri odjerni ta' libell kontra l-intimati

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Jirrizulta illi r-rikorrent hassu malafamat bl-artikolu peress illi pingitu bhala persuna vjolenti filwaqt illi sahaq illi huwa sar jaf bl-artikolu biss dakinhar illi gie ppubblikat meta gie kuntattjat minn Enforcement Officer tad-Dipartiment ta' l-Artijiet illi kien laqmu bhala 'cowboy' u gharrfu illi d-Dipartiment kienu ser jiehdu passi kontrih.

Jirrizulta, skond l-istess rikorrenti, illi huwa kellu kamra illi attwalment tidher fir-ritratt ppubblikat mill-intimati u kien jinsab f'negozjati mad-Dipartiment ta' l-Artijiet sabiex jinghata bicca art li tmiss ma' tali kamra, liema art huwa kien gia ghalaq permezz ta' hajt u recint u kien qed jaghmel uzu privat tieghu hu.

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Jirrizulta wkoll illi tali negozjati illi r-rikorrenz qal li kien beda kienu rizzultat ta' l-Enforcement Notice illi kienet inharget f'Awissu tas-sena 2011 fuq l-art minnu okkupata.

Jirrizulta illi, wara li giet ippubblikata l-istorja, l-awtoritajiet kompetenti marru fuq il-post flimkien mal-Pulizija u il-gaffa u nehew il-hitan u l-affarjiet kollha illegali illi l-istess rikorrenz kien tella fuq dina l-art, u dana gie anke irappurtat fuq l-istazzjonijiet televizivi kollha lokali.

Jirrizulta illi r-rikorrenz hassu urtat mill-fatt illi hbieb tieghu bdew jikkuntattjawh u jistaqsuh x'kien gara dwar il-post tieghu gewwa Victoria Lines, u dana in vista tal-pubblicita' illi spicca kellha l-propjeta minnu okkupata. Kien ghalhekk illi huwa nieda l-proceduri odjerni.

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Kif qalet il-Qorti Ewropeja tad-Drittijiet tal-Bniedem fil-kawza '**Observer and Guardian vs the United Kingdom**' deciza fis 26 ta' Novembru 1991,

(a) Freedom of expression constitutes one of the essential foundations of a democratic society; subject to paragraph 2 of Article 10 (art. 10-2), 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. Freedom of expression, as enshrined in Article 10 (art. 10), is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established.

(b) These principles are of particular importance as far as the press is concerned. Whilst it must not overstep the bounds set, inter alia, in the "interests of national security" or for "maintaining the authority of the judiciary", it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does the press have the task of imparting such information and ideas: the

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public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog".

Kif stqarr l-Imhalled Giovanni Bonello fil-‘dissenting opinion’ tieghu fil-kawza **Flux vs Moldova (no.6)** deciza fid 29 ta’ Lulju 2008,

Freedom of expression would be at a very low ebb were newspapers to be punished, with this Court’s approval, for contributing to a public debate on issues of serious civic concern with the release of trustworthy information – certified as trustworthy by the domestic courts. My view of the responsibilities of healthy, vigorous media – ‘essential public watchdog’ someone called them when not fully recovered from an overdose of optimism - goes some way beyond publishing sanitised press releases issued by the authorities. I’ve now been told I am misguided.

Din il-Qorti ma tistax ta’ tistrieħx fuq konkluzjonijet milhuqa mill-Qorti Ewropeja tad-Drittijiet tal-Bniedem sabiex tiddeciedi l-kaz odjern.

Jirrizulta ben ippruvat illi, fil-fond li r-rikorrent kien jokkupa bhala inkwilin tal-Gvern, huwa kien illegalment appropria ruhu minn bicca art u kien tella hitan madwar tali hajt u beda jaghmel uzu privat minn tali zona ghalkemm kienet art pubblika.

Jirrizulta ben ippruvat illi tali azzjoni illegali tar-rikorrent baqghet impunita ghal aktar minn sbatax il-sena, minkejja illi kienu hargu zewgt Enforcement Notices kontra tieghu, u kien biss rizultat ta’ l-artikoli illi kienu dehru fil-media, inkluz dawk ta’ l-intimat Patrick Cooke, illi l-Awtoritajiet finalment ghaddew biex inehhu l-illegalitajiet kollha li kien hemm fil-fond okkupat mir-rikorrent.

Jirrizulta wkoll illi l-intimat, ghalkemm isemmi fl-artikolu l-fatt illi turisti kienu gew mwissija sabiex ma javvicinawx certa illegalitajiet li kienu raw u jieħdu ritratti tagħhom, imkien ma jaghmel referenza ghar-rikorrent, izda ssir biss referenza għall illegalitajiet li kien hemm fiz-zona, li eventwalment tnehhew mill-Awtoritajiet kompetenti u li, gie maghruf lill-pubbliku illi kienu fil-pussess tar-rikorrent biss permezz tal-proceduri odjerni illi nieda r-rikorrent.

Jirrizulta illi, stante li l-Awtoritajiet kompetenti ma kellhomx informazzjoni dwar min kien qiegħed jokkupa l-art illi fuqha kien sar l-izvlupp illegali, l-intimat Cooke ma kien fl-ebda

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posizzjoni, la illi jikkomunika ma' l-istess rikorrent qabel ma jippubblika l-artikolu meritu tal-kawza odjerna u, wisq anqas, illi jsemmi l-istess rikorrent fl-artikolu.

Jirrizulta illi l-fatt li ttiehed ritratt tal-fond tar-rikorrent ma kienx intenzjonat sabiex b'xi mod jimmalafama jew jaghmel hsara lir-reputazzjoni tar-rikorrent izda kien intenzjonat sabiex jigu mgħarrfa l-Awtoritajiet kompetenti fuq illegalita' illi kellha titneha, liema informazzjoni kella l-ezitu mixtieq peress illi, wara sbatax-il sena, tnehhiet illegalita' illi kienet qed iccahhad lill-pubbliku milli jgawdi l-art pubblika.

Jirrizulta car illi, attwalment, il-hsara illi attwalment sofra ir-rikorrent, ma kienetx hsara tar-reputazzjoni tieghu, izda hsara fis-sens illi gie pprivat milli jkompli jgawdi minn bicca art illi huwa kien illegalment appropria ghalih innifsu ghal aktar minn sbatax-il sena, minghaja ma ittiehdu proceduri kontra tieghu ghalkemm kellu zewgt Enforcement Notices mahrugin kontrih.

Kif stqarret il-Qorti tal-Appell fil-kawza **Dr. Louis Galea vs Dr. Joe Mifsud** deciza fit-3 ta' Frar, 2012:

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

Il-Qorti ma tistax ma tosservax illi l-artikolu illi minnu qiegħed jilmenta r-rikorrent huwa prodott ta' gurnalizmu investigattiv, necessarju u essenzjali għal socjeta demokratika bħalma hija dik Maltija, liema gurnalizmu wassal sabiex, wara sbatax-il sena ta' letargija, fejn ir-rikorrent gie imholli jappropria bicca art tal-Gvern għall-uzu personali tieghu, l-Awtoritajiet finalment gew instigati sabiex jirripristinaw l-art fl-istat illi kellha tinstab qabel ma' r-rikorrent illegalment ha' l-art f'idejh.

Tali gurnalizmu huwa eżempju car tal-funzjoni essenzjali illi l-mezzi tax-xandir għandhom ikollhom bħala 'public watchdog' biex jipprotegu l-interessi tal-pubbliku in generali, u l-Qorti għandha d-dmir illi tipprotegi tali tip ta' gurnalizmu peress illi hija necessarja għal socjeta demokratika bħalma hija dik Maltija.

Konkluzjoni

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Il-Qorti

Wara illi rat il-provi kollha imressqa mill-partijiet

Wara illi semgħet l-abbli difensuri tal-partijiet

Tghaddi biex taqta l-vertenza odjerna billi

Tilqa l-eccezzjonijiet kollha ta' l-intimati u għalhekk

Tichad it-talbiet attrici.

Spejjez tal-proceduri odjerni għandhom ikunu unikament a kariku tar-rikorrent.

< Sentenza Finali >

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