



MALTA

QORTI TAL-MAGISTRATI (MALTA)

MAGISTRAT DR.

FRANCESCO DEPASQUALE

Seduta tat-23 ta' Marzu, 2015

Avviz Numru. 257/2011

Edgar Galea Curmi
(ID 220165M)

vs

Kurt Farrugia

Il-Qorti

Rat ir-rikors ippresentat fil 5 ta' Awissu 2011 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall-ahbarjiet imxandra fis-27 ta' Lulju 2011 fuq l-istazzjoni televiziv One TV, talab illi dawna jigu dikjarati bhala foloz u malafamanti fil-konfront tar-rikorrent u intizi bl-iskop li jtellfu jew inaqqsu r-reputazzjoni tar-rikorrent, u ghalhekk talab lill Qorti tikkundanna lill-intimat ihallsu danni ta' dana in-nuqqas.

Rat it-traskrizzjoni tal-ahbar imxandar fuq il-One TV, precizament intervista mal-gurnalist Saviour Balzan, illi deher fl-ahbarjiet tas 27 ta' Lulju 2011.

Rat in-nota ippresentata mir-rikorrent fit 22 ta' Settembru 2011 fejn indika, fost affarjiet, il-partijiet tax-xandira li l-esponent jqis bhala malafamanti u indika, b'mod partikolari, dawk il-kliem illi qal Saviour Balzan fejn allega illi :

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- (a) "hemm istanzi ohra fejn l-Assistent Personali tal-Prim Ministru uza l-influwenza tieghu jew (qatt) ikkonversa mal-Kummissarju tal-Pulizija dwar (il-kaz ta' Cyrus Engerer u missieru u) kazijiet ohra";
- (b) "Edgar Galea Curmi kemm il-darba jipprova juza l-istampa, u dan nghidu fil-konfront tieghi meta qatt kien hemm xi forma ta' komunikazzjoni, biex jispinnja kif jghidu l-Inglizi, stejjer li jistghu jwegghu jew, ha nghidu hekk, jitfghu dell ikrah fuq certi individwi"
- (c) "Fil-kaz ta' Harry Vassallo, meta qabel l-ahhar Elezzjoni Generali, spicca arrestat. Dakinhar, Edgar Galea Curmi pprova jaghti storja (lill-Saviour Balzan) bil-ghan li tohrog fil-mezzi tax-xandir".

Rat ir-risposta ta' l-intimat ippresentat fl-14 ta' Ottubru 2011 fejn sahaq illi t-talbiet attrici kienu infondati fil-fatt u fid-dritt peress illi dak hemm pubblikat ma huwiex libelluz fil-konfront tar-rikorrent. Sahaq illi l-pubblikazzjoni tikkonsisti f'rappurtagg gurnalistiku accettabbli f'socjeta demokratika filwaqt illi insista illi dak minnu rappurtat kien kopert minn privilegg kwalifikat a tenur tal-Artikolu 12A tal-Kap 248 stante illi huma rappurtaw dak li ntqal. Finalment, l-intimati sahaq illi l-pubblikazzjoni hija fair comment maghmulha in buona fede dwar fatti sostanzjalment veri u fuq kwistjoni ta' interess pubbliku.

Semghet ix-xhieda tar-rikorrent **Edgar Galea Curmi** moghtija fis 27 ta' April 2012 kif ukoll rat id-dokumentazzjoni minnu ppresentata.

Semghet ix-xhieda tal-**Kummissarju tal-Pulizija John Rizzo** moghtija fit 22 ta' Gunju 2012.

Semghet ix-xhieda ta' **Dr Simon Manicolo**, rappresentant tal-Awtorita' tax-Xandir, moghtija fit 22 ta' Gunju 2012.

Rat illi fis 26 ta' Ottubru 2012 ir-rikorrent iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet il-kontro ezami ta' **Edgar Galea Curmi** moghtija fil 31 ta' Mejju 2013.

Semghet ix-xhieda ta' **Saviour Balzan** moghtija fl-20 ta' Jannar 2014.

Semghet ix-xhieda ta' l-intimat **Kurt Farrugia**, moghtija fis 6 ta' Ottubru 2014

Rat illi fl-24 ta' Novmebru 2014 l-intimat iddikjara illi ma kellux aktar provi x'jippresenta.

Semghet it-trattazzjoni ta' l-abblu difensuri tal-partijiet moghtija fit 2 ta' Frar 2015.

Ikkunsidrat

Jirrizulta, mill-provi prodotti, illi r-rikorrent, fiz-zmien meta nieda l-proceduri odjerni, kien il-Kap tas-Segretarjat Privat tal-Prim Ministru ta' dak iz-zmien, Dr Lawrence Gonzi.

Jirrizulta wkoll, mill-provi prodotti, illi fiz-zmien meta saret l-intervista lill Saviour Balzan, editur tal-gazzetta Malta Today u opinjonista, kienet ghadha kif harget storja fil-media lokali fejn kienu ttiehu proceduri kriminali kontra missier Cyrus Engerer, u dana f'it zmien wara

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illi Cyrus Engerer kien iddikjara illi kien telaq il-Partit Nazzjonalista, dak iz-zmien fil-Gvern, u kien inghataq mal-Partit Laburista.

Jirrizulta wkoll illi, f'dak iz-zminijiet, kien gie rappurtat ukoll illi r-rikorrent kien gie kuntattjat minn Cyrus Engerer sabiex jghinu fil-kaz ta' missieru u kien anke gie rappurtat illi, mument minnhom, l-istess rikorrent kien ikkomunika mal-Kummissarju tal-Pulizija ta' dak iz-zmien, John Rizzo, fil-presenza ta' Cyrus Engerer stess, sabiex jindaga dwar x'kien attwalment gara fil-kaz ta' missier Cyrus Engerer.

Jirrizulta illi, fl-sfond ta' dawna l-affarjiet kollha, il-Kamra ta' l-Ahbarjiet tal-One TV kienet ghamlet intervista lill Saviour Balzan fis-27 ta' Lulju 2011 u li giet imxandra fis-19.30pm ta' dakinhar stess, fejn l-istess Saviour Balzan qal is-segwenti:

Kummentarju: Saviour Balzan, l-Editur Manigerjali tal-Mediatoday, f'kummenti lill One News, qal li wiehed jistaqsi kif l-affarjiet graw b'daqshekk koincidenza wara r-rizenja ta' Cyrus Engerer mill-Partit Nazzjonalista.

Saviour Balzan: Il-fatt illi din grat tant vicin wara li Cyrus Engerer ha din id-decizjoni, taqbel jew ma taqbilx, ovvjament, bhala gurnalisti, hassejna l-bzonn li namplifikawha din u nghid imma din koincidenza? iktar u iktar meta nafu li b'kull rispettu lejn issier Cyrus Engerer, setghu facilment sabu zmien differenti.

Kummentarju: Dan il-kaz, lill Saviour Balzan igieghlu jistaqsi x'qed jigri wara l-kwinti?

Saviour Balzan: U dak li ghamel Galea Curmi, igieghelni nistaqsi jekk kienx hemm istanzi ohra fejn l-Assistent Personali tal-Prim Ministru, li issa kkonferma t-telefonata, qatt uza l-influwenza tieghu jew qatt ikkonversa mal-Kummissarju tal-Pulizija dwar kazijiet ohra. Li naf fic-cert mill-esperjenza tieghi, li Edgar Galea Curmi kemm il-darba jipprova juza l-istampa, u dan nghidu fil-konfront tieghi meta qatt kien hemm xi forma ta' komunikazzjoni, biex jisspinja kif jghidu l-Ingliz, stejjer li jistghu iwegghu jew, ha nghidu hekk, jitfghu dell ikrah fuq certi individwi.

Kummentarju: Saviour Balzan semma il-kaz ta' Hary Vassallo, meta, qabel l-ahhar Elezzjoni Generali, spicca arrestat. Dakinhar, jghid Saviour Balzan, Edgar Galea Curmi pprova jaghtih l-istorja bil-ghan li tohrog fil-mezzi tax-xandir.

Jirrizulta illi r-rikorrent, kif indika huwa stess permezz ta' nota quddiem dina l-Qorti, harrsu urtat u malafamat bil-fatt illi Saviour Balzan allega li r-rikorrent kien influwenza lill-Kummissarju tal-Pulizija kif ukoll illi l-istess rikorrent juza l-istampa sabiex 'jispinnja' stejjer li jwegghu. Huwa hassu urtat u malafamat ukoll bil-fatt illi Balzan allega li r-rikorrent kien ghadda l-istorja dwar Harry Vassallo, qabel l-elezzjoni tat-2008, sabiex jipprova johrogha fuq il-mezzi tax-xandir.

Jirrizulta illi l-meritu ta' tali allegazzjonijiet jiffurmaw gia parti minn meritu ta' zewgt kawzi ohra, ossija Avviz Nru 255/11 u 258/11 innieda mir-rikorrent kontra Saviour Balzan u

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Matthew Vella rispettivament izda tali kawzi ma' mxewx flimkien mal-kawza odjerna fuq talba ta' l-intimat, in vista tad-difiza imressqa minnu.

Jirrizulta illi l-intimat iressaq zewgt difizi principali quddiem dina l-Qorti. L-ewwel difiza hija illi dak rappurtat jikkonisisti f'rappurtagg dwar kwistjoni ta' interess pubbliku li ghalih huwa kien protett ukoll bil-privilegg mogti lilu a tenur ta' l-Artikolu 12A tal-Kap 248. It-tieni difiza, imbgħad, hija dik tal-'fair comment' magħmulha in buona fede.

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Mill-provi prodotti quddiem dina l-Qorti u mit-trattazzjoni ta' l-abbli difensuri tal-partijiet, jirrizulta illi l-pern tal-kaz kollu huwa d-dritt ta' l-editur illi jxandar dina l-intervista u r-responsabbilta' illi għandu jkollu editur fix-xandir ta' l-istess intervista.

Ikun għalhekk utili illi dina l-Qorti tezamina ftit fid-dettall l-izvilupp illi sehh tul is-snin li għaddew fil-kamp Ewropew, illi ahna tant nivvantaw illi niffurmaw parti minnha, sabiex il-principji hemm stabbiliti, u ġia mħaddna minn dawna l-Qrati, jigu kkunsidrati u ri-affermati mill-Qrati tagħna.

Fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja għad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012, il-Qorti għamlet referenza għall-principji generali li jirregolaw il-liberta' ta' l-espressjoni w il-gurnalist, kif ukoll introduciet serje ta' kriterji li kellhom jigu kkunsidrati sabiex jigi meqjus il-bilanc li għandu jitlahaq bejn il-liberta' ta' l-espressjoni u d-dritt tal-individwu privat li jkollu r-reputazzjoni tiegħu protetta.

Dwar il-principji generali tal-liberta' ta' l-espressjoni, l-istess Qorti qalet is-segweni:

78. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for 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 pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, freedom of expression is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

Dwar ir-rwol importanti li għandu jkollu gurnalist fil-qasam tal-liberta ta' l-espressjoni, l-Qorti tkompli tghid:

79. The Court has also repeatedly emphasised the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, regarding in particular protection 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 such 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”.

80. This duty extends to the reporting and commenting on court proceedings which, provided that they do not overstep the bounds set out above, contribute to their publicity and are thus consonant with the requirement under Article 6 § 1 of the Convention that hearings be public. It is inconceivable that there can be no prior or contemporaneous discussion of the subject matter of trials, be it in specialised journals, in the general press or amongst the public at large. Not only do the media have the task of imparting such information and ideas; the public also has a right to receive them. (sottolinear ta' dina l-Qorti)

81. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case.

Ir-rwol importanti tal-gurnalist u d-dritt tal-liberta' ta' l-esspressjoni, madanakollu, ghandha tigi bilancjata bi drittijiet u obbligi fuq l-istess gurnalist fil-qadi ta' dmirijietu, u, di fatti, il-Qorti, dwar tali doveri da' parte tal-gurnalist, tghid hekk:

82. However, Article 10 § 2 of the Convention states that freedom of expression carries with it “duties and responsibilities”, which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the “rights of others”. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations.

A differenza ta' persuna pubblika illi, la darba ghandha funzjoni pubblika ghandha tkun soggetta ghall-livell ta' skrutinju oghli, persuna privata ghandha tinghata l-protezzjoni illi lilha jisthoqq, u di fatti, il-Qorti tghid:

83. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life. The concept of “private life” is a broad term not susceptible to exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person’s identity, such as gender identification and sexual orientation, name or elements relating to a person’s right to their image. It covers personal information which individuals can legitimately expect should not be published without their consent.

In order for Article 8 to come into play, however, an attack on a person’s reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life. The

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Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence.

Tenut kont ta' dawna l-fatti, il-Qorti ghandha tassikura illi jintlahaq bilanc necessarju bejn id-dritt tal-liberta' ta' l-espressjoni u id-dritt tal-protezzjoni tar-reputazzjoni, u sabiex jigi assikurat li hemm tali bilanc, il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem niedet sitt kriterji importanti sabiex jigi assikurat illi, kif tghid il-Qorti, "*the right to freedom of expression is being balanced against the right to respect for private life*". Dawna l-kriterji kif stabbiliti huwa s-segwent:

(a) Contribution to a debate of general interest

90. An initial essential criterion is the contribution made by photos or articles in the press to a debate of general interest. The definition of what constitutes a subject of general interest will depend on the circumstances of the case. The Court nevertheless considers it useful to point out that it has recognised the existence of such an interest not only where the publication concerned political issues or crimes, but also where it concerned sporting issues or performing artists. However, the rumoured marital difficulties of a president of the Republic or the financial difficulties of a famous singer were not deemed to be matters of general interest

(b) How well known is the person concerned and what is the subject of the report?

91. The role or function of the person concerned and the nature of the activities that are the subject of the report and/or photo constitute another important criterion, related to the preceding one. In that connection a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures. A fundamental distinction needs to be made between reporting facts capable of contributing to a debate in a democratic society, relating to politicians in the exercise of their official functions for example, and reporting details of the private life of an individual who does not exercise such functions.

Whilst in the former case the press exercises its role of "public watchdog" in a democracy by imparting information and ideas on matters of public interest, that role appears less important in the latter case. Similarly, although in certain special circumstances the public's right to be informed can even extend to aspects of the private life of public figures, particularly where politicians are concerned, this will not be the case – even where the persons concerned are quite well known to the public – where the published photos and accompanying commentaries relate exclusively to details of the person's private life and have the sole aim of satisfying the curiosity of a particular readership in that respect. In the latter case, freedom of expression calls for a narrower interpretation.

(c) Prior conduct of the person concerned

92. *The conduct of the person concerned prior to publication of the report or the fact that the photo and the related information have already appeared in an earlier publication are also factors to be taken into consideration. However, the mere fact of having cooperated with the press on previous occasions cannot serve as an argument for depriving the party concerned of all protection against publication of the report or photo at issue.*

(d) Method of obtaining the information and its veracity

93. *The way in which the information was obtained and its veracity are also important factors. Indeed, the Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism.*

(e) Content, form and consequences of the publication

94. *The way in which the photo or report are published and the manner in which the person concerned is represented in the photo or report may also be factors to be taken into consideration. The extent to which the report and photo have been disseminated may also be an important factor, depending on whether the newspaper is a national or local one, and has a large or a limited circulation.*

(f) Severity of the sanction imposed

95. *Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of an interference with the exercise of the freedom of expression.*

Il-Qorti tosserva illi, filwaqt illi l-ahhar kriterju mniedi mill-Qorti Europeja ghad-Drittijiet tal-Bniedem mhix necessarjament utili ghall-ezami tal-kaz odjern, certament il-kriterji l-ohra lkoll ghandu rilevanza mhux zghira fil-kaz odjern. Madanakollu, qabel ma' l-Qorti tghaddi biex taghmel il-konsiderazzjonijiet taghha, ikun opportun wkoll illi jigi kkunsidrat il-varji livelli ta' kritika accettati minn kullhadd illum il-gurnata.

Kif intqal fis-sentenza **Ligens vs Austria**, 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

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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 skrutinju, madanakollu, ma giex limitat biss għall-politici, u, di fatti, fil-kawza **Novaya Gazeta Voronezhe vs Russia** deciza fl-20 ta' Gunju 2011, is-segwent i persuni tqisu illi huma sogetti għal skrutinju oghla minn persuna privata, għalkemm f'livelli differenti, meta qalet:

"44. The Court reiterates that a politician acting in his public capacity inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large.

45. ... The Court notes that civil servants acting in an official capacity are, similarly to politicians albeit not to the same extent, subject to wider limits of acceptable criticism than a private individual.

46. ... The Court points out that private individuals lay themselves open to scrutiny when they enter the public arena and considers that the issue of the proper use of public funds is undoubtedly a matter for open public discussion.

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Jirrizulta, mid-difiza imressqa mill-intimat illi ser tigi kkunsidrata minn dina l-Qorti f'dana l-istadju, illi huwa sahaq li dak minnu rrapportat kien, mhux biss, ta' interess pubbliku, izda kien ukoll privileggjat a tenur ta' l-Artikolu 12A tal-Kap 248.

L-Artikolu 12A tal-Kap 248 jipprovdi dan li gej:

Fi proċeduri meħuda in forza ta' dan l-Att tkun difiża għall-editur jew għar-responsabbli għall-pubblikazzjoni li jipprova li l-informazzjoni publikata kienet tikkonsisti f'rapport preċiż ta' diskors li sar f'avveniment pubbliku importanti minn persuna identifikata u li kienet taf jew raġonevolment setgħet tkun taf jew tistenna li l-kontenut ta' dak id-diskors se jigi publikat f'gazzetta jew f'mezz tax-xandir, u li l-pubblikazzjoni tal-istess diskors kienet raġonevolment ġustifikabbli f'soċjetà demokratika.

Għalkemm il-Qorti tifhem l-importanza tal-mezzi tax-xandir illi jirrapportaw avvenimenti pubblici u jkunu debitament protetti għal dak li jigi hekk irrappurtat li qal terza persuna, certament, fil-kaz odjern, għalkemm dak illi kien qed jigi rrapportat kienet il-fehma ta' persuna li certament tista titqies bhala pubblika, tali rrapportagg ma jistax jitqies bhala protett bil-privilegg kwalifikat ta' l-Artikolu 12A kif redatt mill-legislatur, kif minnu rikjest, stante illi certament l-intervista ta' Saviour Balzan ma saritx f'avveniment pubbliku u, la darba l-legislatur għazel li jillimita tali privilegg għall "*diskors li sar f'avveniment pubbliku*", tali privilegg ma huwiex applikabbli għalih.

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Għalkemm, kif indikat minn dina l-Qorti, dak rrapportat ma jistax jikkwalifika bhala publikazzjoni privileggjata a tenur ta' l-Artikolu 12A, ikun opportun illi jigi kkunsidrat jekk

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dak, hekk rappurtat, minghajr ma jidhol fil-meritu ta' l-allegazzjonjiet minnhom innfushom, ghandhux jitqies bhala "*ta' interess pubbliku accettabbli f'socjeta demokratika*", kif sahaq l-intimat fid-difiza tieghu.

Jirrizulta, mhux ikkontestat, illi r-rikorrent, ghalkemm mhux persuna eletta fil-parlament, kienet, fil-mument tal-pubblikazzjoni, persuna li ghandha titqies bhala pubblika, kemm in vista tal-fatt illi kellha kariga pubblika, kif ukoll in vista tal-fatt illi l-impjeg tieghu, li sar permezz ta' kuntratt, kien bhala l-Assistent Personali tal-Prim Ministru ta' dak iz-zmien, posizzjoni illi tista titqies bhala 'position of trust' u ghalhekk soggett ghall-iskrutinju tal-pubbliku in generali. Dawna l-elementi kollha, minnhom innfushom, huma sufficjenti sabiex r-rikorrent jitqies bhala soggett ghall livell ta' skrutinju oghla minn dik ta' persuna privata.

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La darba ma hemmx dubju li r-rikorrent huwa persuna pubblika, il-Qorti ghandha tghaddi biex tikkunsidra uhud mill-kriterji stabbiliti mill-Qorti Ewropeja sabiex tistabilixxi jekk dak hemm rappurtat kienx ta' interess pubbliku jew le.

Jinghad, f'dana l-istadju, illi l-kriterji fuq imsemmija mill-ECHR kienu intizi sabiex jintlahaq bilanc bejn id-dritt tal-liberta' ta' l-espressjoni u d-dritt tal-privatezza ta' persuna privata. Ghalhekk, stante illi r-rikorrent ma jistax jitqies bhala persuna privata izda huwa persuna pubblika, tali kriterji, f'dan il-kaz partikolari, ghandhom jitqiesu b'mod aktar liberu u mhux restrittiv.

Jirrizulta mhux kkontestat illi r-rikorrent kien ikkomunika mal-Kummissarju tal-Pulizzia sabiex jindaga dwar il-kaz ta' missier Cyrus Engerer, u dana wara illi missier Cyrus Engerer kien gie arrestat mill-Pulizzija u tressaq il-Qorti fuq akkuzi relatati ma' drogi.

Jirrizulta mhux ikkontestat ukoll illi Cyrus Engerer kien militant fil-Partit Nazzjonalista sakemm, f'tit zmien qabel ma tressaq missieru, iddikjara pubblikament illi kien ser jibqa jimmilita fil-Partit Laburista, fatt illi kien qajjem hafna kjass politiku u fil-mezzi tax-xandir.

Jirrizulta ukoll mhux ikkontestat illi Dr Harry Vassallo, f'tit jiem qabel l-Elezjoni Generali tas-sena 2008, kien gie arrestat mill-Pulizzija wara li multa illi huwa kien inghata kienet giet kkonvertita f'habs.

Jirrizulta illi, sussegwentement, ir-rikorrent, bhala Kap tas-Segretarjat ta' l-Ufficcju tal-Prim Ministru kien ikkomunika mal-Kummissarju tal-Pulizzia sabiex jinvestiga "*bir-reqqa l-avvenimenti kollha li setghu wasslu ghall-mod stramb kif il-Pulizzija agixxiet f'dan il-kaz*" kif intqal f'Press Release mahrug mili-istess Segretarjat meta harget l-istorja relatata ma' Dr Harry Vassallo.

Jirrizulta, mix-xhieda ta' Saviour Balzan moghtija minn dina l-Qorti f'din il-kawza partikolari, illi r-rikorrent kien ltaqa' ma' l-istess Saviour Balzan fis-sena 2008 sabiex jiddiskuti mieghu certi stejjer illi setghu kienu ta' interess ghall-istess Balzan, bhala editur tal-gazzetta Malta Today.

Jirrizulta, ghalhekk, certament ippruvat illi dak li kien qieghed jigi rappurtat fl-ahbarjiet illi dwarhom qieghed jilmenta ir-rikorrent kienet kwistjoni li certament kellha titqies bhala ta'

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interess pubbliku stante illi kienet tikkoncerna azzjonijiet mehudha kontra persuni involuti fil-kamp politiku u li fiha ir-rikorrent, b'xi mod, kien intervjena.

Ghalhekk, l-element jekk dak irrappurtat kellhux valur ghal kriterju “*contribution to a debate of general interest*” certament jirrizulta ippruvat.

Ikkunsidrat

Element iehor kunsidrat mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem kien dwar “*How well known is the person concerned and what is the subject of the report.*”

Jirrizulta ben ippruvat illi r-rikorrent kien maghruf illi kellu l-kariga ta' Kap tas-Segretarjat tal-Prim Ministru u kien ben risaput ukoll illi, rizultat ta' tali kariga, ir-rikorrent kien involut u responsabbli ghall-amministrazzjoni tal-Ufficju tal-Prim Ministru, liema ufficcju certament ghandu jitqies bhala wiehed mill-aktar Ministeri, jekk mhux l-aktar Ministeru importanti fi hdan il-Gvern tal-gurnata.

Jirrizulta wkoll ippruvat illi dak li dwaru kien qed isir il-kumment, ma kienetx tirrigwarda xi azzjoni tar-rikorrent fil-hajja privata tieghu, izda kienet tirrigwarda azzjonijiet illi kien ha ir-rikorrent bhala Kap tas-Segretarjat tal-Prim Ministru fiz-zewgt istanzi fejn persuna politika kienet involuta, ossija il-kaz ta' missier Cyrus Engerer u il-kaz ta' Dr Harry Vassallo, u fejn ma huwix ikkontestat illi ir-rikorrent, b'xi mod, kien involva ruhu ma' l-awtoritajiet kompetenti, ossija il-Kummissarju tal-Pulizjija.

Dawna l-fatti, wahdehom, huma certament sufficjenti biex jitqies illi dana il-kriteju hekk stabbilit mill-Qorti Ewropeja jkun sodisfatt ukoll.

Ikkunsidrat

Bhalma gia kellha l-okkazzjoni tosserva dina l-Qorti, is-sitt kriterji imsemmija mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kaz ta' Axel Springer ghandhom rilevanza partikolari fejn hemm persuna privata involuta. Ghalhekk, fil-kaz odjern, la darba ir-rikorrent kien persuna pubblika meta saret il-pubblikazzjoni, l-utilizz ta' tali kriterji huma utili unikament sabiex aktar issahhah l-argument illi dak rappurtat kien jaqa' fil-parametri ta' ahbar ta' interess generali li kien jenhtieg illi jigi rappurata fil-mezzi tax-xandir.

Bhalma qalet il-Qorti Ewropeja ghad-drittijiet tal-Bniedem fil-kaz **Petrenko vs Moldova** deciz fit-30 Marzu 2010:

"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”. Accordingly, journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation. In this respect, it is clear from

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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".

Jirrizulta ben car, mill-provi prodotti, illi r-raguni li wasslet ghal-kawza odjerna, ma kienet xi kummentarju illi saret mill-intimat jew dipendenti tieghu fil One TV, izda kienet il-kummenti illi ghadda Saviour Balzan, persuna pubblika u opinjonista maghrufa fil-mezzi tax-xandir, li ghalhom ir-rikorrent hassu urtat tant illi nieda wkoll proceduri kontra l-istess Saviour Balzan.

Huwa ghalhekk illi l-Qorti ma hijiex ser tmur oltre milli tezamina d-difiza imqajjma mill-intimat tal-"interess pubbliku", peress illi l-meritu tal-fatti illi dwarhom qieghed jilmenta ir-rikorrent fil-konfront ta' Saviour Balzan huma l-meritu ta' kawza ohra li ghandha 'sub judice'.

Ikkunsidrat

Il-Qorti, tenut kont tal-fatti kollha kif esposti kif ukoll id-difiza mressqa mill-intimat, tosserva illi l-obbligu tax-xandar, bhalma kien l-intimat, kien illi jittrasmetti l-informazzjoni li persuni pubblici, li huwa mifhum jifhmu l-konsegwenzi ta' dak li jkunu qalu, riedu jghaddu lic-cittadin, li ghandu kull dritt illi jircievi f'socjeta demokratika bhalma hija dik Maltija.

Ix-xandar, filwaqt illi ghandu l-obbligu jassikura illi dak minnu trasmess ma huwiex malafamanti fil-konfront ta' xi parti, ghandu id-dritt illi jasal ghall-konkluzjoni illi persuna pubblika hija kapaci, minnha nnifisha, tasal ghal konkluzjoni dwar x'ghandu jitqies bhala malafamanti jew le, u ghalhekk, f'kaz ta' dikjarazzjoni ta' persuni pubblici, ghandu d-dritt illi jistrieħ fuqhom u jwassalhom lic-cittadin - tali assunzjoni ma ghandhiex tapplika f'kaz illi l-kummenti rappurtati mix-xandar qed jintqalu minn persuna privata.

Ghalhekk, il-Qorti tqis illi, abbazi tal-provi kif imressqa quddiem dina l-Qorti fil-kaz odjern, huwa ben ippruvat illi dak rappurtat mill-intimat kien ta' interess pubbliku u ghalhekk kellu jigi trasmess, fl-ahjar interess tal-pluralismu u tolleranza illi hija wahda mill-aktar, jekk mhux l-aktar element importati ta' socjeta demokratika, li l-Qrati huma obligati jipprotegu.

Tenut kont ta' tali konsiderazzjoni, il-Qorti ma hijiex ser tiehu in konsiderazzjoni l-eccezzjoniet l-ohra imqajjma mill-intimat, stante illi dawna huma l-meritu ta' kawzi ohra gia imsemmija aktar 'l fuq, u ser tghaddi ghal konkluzjoni unikament fuq it-tielet eccezzjoni ta' l-intimat.

Konkluzjoni

Il-Qorti,

Wara illi rat il-provi kollha prodotti quddiema fil-kawza odjerna,

Wara illi semghet it-trattazzjoni ta' l-abbli difesuri tal-partijiet

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Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa t-tielet eccezzjoni ta' l-intimat u tidkjara illi l-ahbar minnu trasmess kien necessarju u ta' interess pubbliku f'socjeta demokratika bhalma hija dik Maltija u filwaqt illi

Tastjeni milli tipprovdi dwar l-eccezzjonijiet l-ohra ta' l-intimat

Tichad it-talba attrici

Spejjez tal-proceduri odjerni ghandhom ikunu a kariku tar-rikorrent.

< Sentenza Finali >

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