



MALTA

**QORTI TAL-MAGISTRATI (MALTA)**

**MAGISTRAT DR.**

**FRANCESCO DEPASQUALE**

Seduta tal-11 ta' Mejju, 2015

Avviz Numru. 193/2012

**Richard Cachia Caruana**

**(ID 139255M)**

**vs**

**Evarist Bartolo u Kurt Farrugia**

Il-Qorti:-

Rat ir-rikors promotur ippresentat fil-31 ta' Mejju 2012 fejn ir-rikorrent, filwaqt illi ghamel referenza ghall diskors imxandar mill-intimat Barotlo fejn allega, fos affarjiet ohra, illi r-

Pagna 1 minn 8

Qrati tal-Gustizzja

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rikorrent juza s-servizzi sigrieti kontra minn jaghmel xi haga li ma toghgobx lill-istess rikorrent, u dana waqt programm ta' diskussjoni mxandar fid 19 ta' Mejju 2012 bejn l-10 u il-11 fuq One Radio li tieghu l-intimat Farrugia kien l-editur, talab lill-Qorti tiddikjara illi dak illi intqal fiil-konfront tieghu kien libelluz u malafamanti fil-konfront tieghu u intiza bhala skop li jtellef jew inaqqs ir-reputazzjoni ta' l-istess rikorrenti u ghalhekk l-istess Qorti kellha tikkundanna lill-istess intimati ghal danni a tenur ta' l-artikolu 28 tal-Kap 248.

Rat traskrizzjoni tad-diskors esebit mill-istess rikorrenti fejn, waqt dibattitu bejn l-intimat Evarist Bartolo u David Agius, l-istess Evarist Bartolo jinstema jghid is-segweni kliem:

*" ... li RCC imexxi kollox hu. All right. U li kullhadd jibza minnu ghax juza s-servizz sigriet kontra tieghek jekk inti taghmel xi haga ...."*

*" .... Ibezza. U zgur. Good governance RCC. Bniedem mhux mahtur. Ghandu dak il-poter kollu."*

*" Nghid jien? Hemm il-Kabinett. Hemm il-Kabinett jibza minnu. X'nggid jien!"*

Rat l-eccezzjonijiet ta' l-intimat Evarist Barotlo ippresentati fit 3 ta' Lulju 2012 u ta' l-intimat Kurt Farrugia ippresentati fil 25 ta' Lulju 2012 fejn it-tnejn saħqu illi ma kien hemm xejn libelluz fil-kummenti rappurtatu peress illi l-kummenti kienu opinjoni ta' persuna pubblika fil-konfront ta' persuna pubblika ohra u, bhala valur judgment kif imsejha mill-European Court of Human Rights, jew fair comment, kif imsejha mill-Qrati nostrani, mhix u ma tistax tkun libelluza, anzi hi protetta kemm mill-Kostitutzzjoni ta' Malta u mill-Konvenzjoni Ewropeja tad-Drittijiet tal-Bniedem.

Semghet ix-xhieda tar-rikorrent **Richard Cachia Caruana** moghtija fis 6 ta' Mejju 2013 kif ukoll rat dokumentazzjoni minnu esebita.

Semghet ix-xhieda ta' **George Grech**, Kap tas-Servizz ta' Sigurta' bejn is-sena 1987 sas-sena 2000, moghtija fl-10 ta' Gunju 2013.

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Semghet ix-xhieda ta' **Herbert Agius**, Kap tas-Servizz ta' Sigurta' bejn is-sena 200 u 2003, moghtija fit 30 ta' Settembru 2013.

Semghet ix-xhieda ta' **Godfrey Scicluna**, Kap tas-Servizz ta' Sigurta' bejn is-sena 2003 sa Settembru 2013, moghtija fit 30 ta' Settembru 2013.

Rat illi r-rikorrenti, fit 30 ta' Settembru 2013, iddikjara illi ma kellux aktar provi x'jipresenta.

Rat illi fl-20 ta' Jannar 2014, wara illi l-intimati ma ppresentaw ebda provi, l-Qorti ddikjarat il-provi taghhom maghluqa u differiet il-kawza ghas-sentenza.

Rat illi fit 23 ta' Gunju 2014, il-Qorti osservat illi, la darba kien hemm proceduri kriminali quddiem l-istess Qorti dwar l-istess fatti illi kienet ghadha pendenti, ssuspendiet il-prolazzjoni tas-sentenza sabiex il-provi fil-proceduri kriminali jkunu jistghu jigu terminati wkoll.

Rat illi fit 23 ta' Marzu 2015, il-Qorti giet infurmata illi l-proceduri kriminali fl-istess ismijiet giet irtirata mir-rikorrent fil 25 ta' Frar 2015 u ghalhekk il-Qorti setghet tipprocedi bis-sentenza taghha.

### **Ikkunsidrat**

Jirrizulta mill-provi prodotti u mhux ikkontestati, illi, fid-19 ta' Mejju 2012, fuq l-istazzjon tar-radju One Radio, ittella dibattitu politiku illi fih attendew l-intimat Evarist Bartolo, bhala Membru Parlamentari Laburista u l-Membru Parlamentari Nazzjonalista David Agius .

Jirrizulta illi, mument minnhom, l-intimat Bartolo ghazel illi jaghmel allegazzjonijiet fil-konfront tar-rikorrent Richard Cachia Caruana, illi ma kienx presenti dakinhar, u ghalkemm

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gie imwissi minn Agius sabiex ma jkomplix jaghmel tali allegazzjonijiet, huwa baqa' jaghmel tali allegazzjonijiet.

Jirrizulta illi l-allegazzjonijiet maghmulha mill-intimat Bartolo kienu fis-sens illi kullhadd jibza mir-rikorrent, u dana anke membri tal-Kabinett, u dana ghax ir-rikorrent juza s-Servizz Sigriet kontra kull minn jaghmel xi haga illi ma toghgobx lill-istess rikorrent.

Jirrizulta illi l-intimati, fid-difiza taghhom, saħqu illi dak li intqal ma kienx libelluz fil-konfront tar-rikorrent, peress illi ntqal minn persuna pubblika dwar persuna pubblika ohra u kien jikkonsisti f'valur judgment u fair comment accettabbli fis-socjeta demokratika Maltija.

### **Ikkunsidrat**

Jirrizulta illi quddiem dina l-Qorti gew ippresentati unikament provi da' parte tar-rikorrent, peress illi l-intimat qatt ma ressqu provi sabiex jissustanzjaw id-difiza taghhom.

Jirrizulta illi l-provi prodotti quddiemha kienu l-kapjijiet tas-Servizz ta' Sigurta' maltija sa minn mindu giet stabbilita fis-sena 1996, u dawna kienu George Grech, Herbert Agius u Godfrey Scicluna, illi kien il-Kap tas-Servizz ta' Sigurta' sa wara ma ntqalu l-kliem meritu tal-kawza odjerna.

Jirrizulta illi dawna t-tlett xhieda, ghalkemm gharrfu lill-Qorti illi kienu jafu lir-rikorrenti socjalment, insistew illi hadd qatt ma indahhalhom fix-xoghol taghhom bhala Kap tas-Servizz Sigriet u ghalhekk nnegaw illi r-rikorrent qatt seta uza s-Servizz Sigriet kontra persuni illi huwa ma kienx kuntent bihom, kif allega l-intimat Bartolo.

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Jirrizulta illi l-intimati, fid-difiza tieghu, saħqu illi r-rikorrent kien persuna pubblika u li l-kumment tagħhom kellu jitqies bhala 'fair comment'. Ikun għalhekk opportun illi dina l-Qorti tevaluwa l-principji generali illi japplikaw għal tali difizi.

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Dwar il-fatt illi r-rikorrent kien persuna pubblika, huwa fatt mhux ikkontestat illi r-rikorrent, qabel il-pubblikazzjoni meritu tal-kawza odjerna, kien ikopri divesi karigi importanti fis-Servizz Civil, għalkemm fil-mument meta ntqalu l-kliem meritu tal-kaz odjern, r-rikorrent ma kien qed ikopri ebda kariga ufficjali. Jirrizulta ukoll mhux ikkontestat illi l-intimat Bartolo huwa persuna pubblika, bhala Membru Parlamentari.

Dwar il-livell ta' kritika accettabbli għall-persuna illi tahdem fi-servizz tac-Civil, il-Qorti Ewropeja tad-Drittijiet tal-Bniedem kellha dan xi tghid:

Fil-kawza **Poyraz vs Turkey** deciza fis 7 ta' Dicembru 2010, intqal illi:

*“Civil servants acting in an official capacity are, like politicians, subject to the wider limits of acceptable criticism. Admittedly those limits may in some circumstances be wider with regard to civil servants exercising their powers than in relation to private individuals. However, it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to the criticism of their actions [...] civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty”.*

Fil-kawza **Novaya Gazeta v Voronehze v. Russia** deciza fl-20 ta' Gunju 2011, intqal is-segwent:

*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 (see, mutatis mutandis, Janowski v. Poland [GC], no. 25716/94, § 33, ECHR 1999-I).*

Għalhekk, jirrizulta ben assodat il-principju illi persuna illi jahdem fis-servizz statali, għandu jkun soggett għall-livell oghla ta' kritika dwar l-operat tieghu, izda, madanakollu ma għandux

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jitqies bhala persuna politika, illi hija soggett ghal-skrutinju u livell ta' kritika wiesgħa, stante illi jenhtieg illi l-persuni tas-servizz civil għandhom ikunu protetti sabiex ikunu jistgħu jagħmlu xogħolhom kif misthoqq.

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It-tieni difiza imqajjma mill-intimat kienet dik tal-*'fair comment'*.

Kif jingħad f' **Gatley on Libel and Slander** dwar id-difiza ta' *'fair comment'*;

*To succeed in a defence of fair comment 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.*

Huwa fatt indiskuss illi d-“difiza” tal-“fair comment” dejjem kienet intiza sabiex tissalvagwardja dritt li hu importanti daqs dak li individwu jipprotegi r-reputazzjoni tajba tiegħu, u cioe`id-dritt tal- espressjoni hielsa.

Di fatti, kif ingħad 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 **Dr Louis Galea vs Etienne St John u Felix Agius** deciza fit 30 ta' April 2015, intqal illi :

*dwar l-aspett tad-difiza tal-kumment gust ilu zmien jingħad mill-Qrati tagħna li, biex id-difiza tal-kumment gust tkun tghodd, jehtieg li min jistrieħ fuqha jseħħlu juri li (a) l-kumment kien imsejjes fuq fatt li jkun issemma fil-pubblikazzjoni li minnha jitressaq l-ilment; (b) il-fatt imsemmi jrid ikun sostanzjalment minnu; (c) il-kumment irid jintwera li jkun gustifikabbli jew misthoqq; (d) il-kumment irid ikun tali li jikkwalifika bhala kritika u mhux zebliħ, tghajjir jew insolenza; u (e) irid jagħti l-fehma onesta tal-kumentatur u li l-pubblikazzjoni ta' dik il-fehma ma saritx b'hażen jew bil-ħsieb preċiż li jwegġa' lil dak li jkun.*

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Tali taghlim huwa anke rifless f'gurisprudenza estera u, di fatti, fil-kawza **Spiller vs Joseph** deciza mill-Qorti tal-Appell Ingliża fl 1 ta' Dicembru 2010, Lord Phillips ghamel is-segwent i 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.*

Finalment, dwar il-kuncett ta' 'value judgment', il-Qorti Ewropeja ghad-Drittijiet tal-Bniedem, fil-kawza **Jerusalem vs Austria** (2003) EHRR 567, para 43, tghid is-segwent i:

*... even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment may be excessive if it has no factual basis to support it – Jerusalem v Austria (2003) 37 EHRR 567, para 43."*

Jirrizulta car, ghalhekk, mill-provi fuq impressqa, illi hemm sabiex ididifiza ta' *'fair comment'* u *'value judgment'* tirnexxi, irid jigi ppruvat illi dak allegat huwa bbazat fuq fatti sostanzjalment veri.

Fil-kaz odjern, jirrizulta illi l-allegazzjoni principali illi abbazi taghha ir-rikorrent nieda l-proceduri odjerni, kienet illi huwa kien jaghmel uzu mis-Servizzi Sigriet kontra persuni illi huwa ma jkunx qieghed jaqbel maghhom, u dana sabiex jaghmillhom il-hsara.

L-ahjar prova illi seta jitressaq quddiem dina l-Qorti kien il-Kap tas-Servizzi Sigrieti stess u, fil-kaz odjern, ir-rikorrenti ressaq quddiemha it-tlett kapijiet ta' l-istess Servizz Sigriet, minn meta giet iffurmata sa ftit wara illi ntqalu l-kliem meritu tal-kawza odjerni, liema persuni distinti lkoll kkonfermaw bil-gurament illi qatt ma gew ikkuntattjati mir-rikorrent u ir-rikorrent qatt ma ghamel uzu mis-Servizz Sigriet sabiex jaghmel hsara lill-terzi, kif allega l-intimat Bartolo.

Ghalhekk, jidher car illi l-allegazzjonijiet illi ghamel l-intimat Bartolo fil-konfront tar-rikorrent ma humiex sostanzjalment veri u ghalhekk id-difiza ta' *'fair comment'* u *'value judgment'* ma tistax tirrizulta ippruvata.

## Konkluzjoni

Il-Qorti,

## Kopja Informali ta' Sentenza

Wara illi rat il-provi kollha prodotti quddiemha,

Wara illi rat it-trasmissjoni meritu tal-kawza odjerna

Tghaddi sabiex taqta u tiddeciedi tali vertenza billi

**Tichad** l-eccezzjonijiet kollha ta' l-intimati

**Tiddikjara** illi l-pubblikazzjoni ossija kliem illi ntqalu minn Evarist Bartolo fil-programm ta' diskussjoni imtella fuq One Radio fid-19 ta' Mejju 2012, li tieghu Kurt Farrugia kien editur, kienu malafamanti u libelluzi fil-konfront tar-rikorrent Richard Cachia Caruana, u ghalhekk

**Tilqa** t-talba attici u

**Tikkudanna** lill-intimati, in solidum bejniethom, in liena ta' danni a tenur ta' l-Artikolu 28 tal-Kap 248, ihallsu lir-rikorrent is-somma ta' elfejn Euro (€2,000) bl-imghaxijiet legali mill-lum sad-data tal-pagament effettiv.

Spejjez tal-proceduri odjerni ikunu kollha a kariku ta' l-intimati in solidum bejniethom.

## < Sentenza Finali >

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