



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar il-Hamis tmienja (8) ta' Ottubru 2015

Rikors Numru 321/08 FDP

fl-ismijiet

D Toni Abela

(ID 482157M)

VS

Daphne Caruana Galizia

(ID 450664M)

Il-Qorti

Rat ir-rikors promotur ipprezentat fid-19 ta' Settembru 2008 fejn ir-rikorrenti, filwaqt ili ghamel referenza ghall artikolu ossija 'blog' illi deher fuq is-sit elettroniku www.daphnecaruanagalizia.com fit 12 ta' Awissu 2008 intitolat "Ajma x'biza, an earthquake warning, hej", talab lill-Qorti tiddikjara tali artikolu bhala libelluz u malafamanti fil-konfront tieghu u ghalhekk tikkundanna lill-intimata thallas id-danni hekk likwidati a tenur ta' Kap 248 tal-Ligijiet ta' Malta.

Rat il-blog meritu tal-kawza odjerna esebit mir-rikorrent flimkien mar-rikors promotur.

Rat l-eccezzjonijiet ta' l-intimata ipprezentati fil 5 ta' Novembru 2008 fejn laqghet ghal dak mitlub billi sahqet illi ma kien hemm xejn libelluz fil-konfront tar-rikorrent u l-kontenut tal-kitba kien jammont ghall opinjoni, ossija value judgment, tal-konvenuta dwar avvenimenti ta' interess pubbliku li ma humiex libelluzi.

Rat ix-xhieda ta' **Dr Toni Abela** moghtija fit 23 ta' April 2009.

Rat ix-xhieda ta' **Daphne Caruana Galizia** moghtija fid 19 ta' Mejju 2009.

Rat in-nota ipprezentata mir-rikorrent fid 9 ta' Gunju 2009 fejn esebixxa 'blog' illi ghamel l-istess rikorrent fuq il-blog spot tieghu www.toniabela.blogspot.com intitolat "Ghaziza Daphne" u datat 15 ta' Gunju 2008.

Rat illi bejn il 25 ta' Jannar 2010 u it-18 ta' Novembru 2013 saru wiehed u ghoxrin seduta fejn ir-rikorrent ma ippresenta ebda xhieda u l-kawza giet dejjem differita fuq talba ta' l-istess rikorrent sabiex jirregola ruhu dwar il-kawza.

Rat illi, wara li l-Qorti ghaddiet biex iddikjarat l-istadju tal-provi rikorrenti bhala maghluqa wara li baqghu ma tressqu ebda provi ohra, xehdet l-intimata Daphne Caruana Galizia fl-14 ta' Marzu 2014 u sar il-kontro ezami taghha.

Semghet ix-xhieda ulterjuri ta' l-istess Daphne Caruana Galizia moghtija fil 5 ta' Mejju 2014 kif ukoll fid 19 ta' Jannar 2015.

Rat illi fid 19 ta' Frar 2015 il-Qorti ddikjarat l-istadju tal-provi maghluqa u halliet il-kawza ghat-trattazzjoni finali.

Semghet it-trattazzjoni finali tal-abbli difensuri tal-partijiet moghtija fis 6 ta' Lulju 2015, wara liema data il-kawza giet differita ghas-sentenza ghallum.

Ikkunsidrat

Jirrizulta illi r-rikorrent hassu malafamat bl-ewwel parti ta' l-artikolu miktub mill-intimata, fejn tghid is-segwenti:

“Joseph Muscat gave another ‘earthquake warning’ in his usual column in The Times, yesterday. He’s unhappy with the party system that elects clowns, idiots and incompetents to key roles – except where he is concerned, of course. The people who elected Toni Abela, Anglu Farrugia and Jason Micallef also elected him, but he obviously fails to see the connection and that he’s part of the joke. In his won way, he is as crassly incompetent as the rest of them.”

Jirrizulta ippruvat illi r-rikorrent huwa persuna politika u li ghandu kariga ufficjali fi hdan il-Partit Laburista.

Ikkunsidrat

Il-Qorti ma tistax ma tesprimix, l-ewwel u qabel kollox, id-disapprovazzjoni taghha ghad-dilungar zejzed u inutili illi tikkaratterizza dawna l-proceduri odjerni bhalma, sfortunatament, jittaratterizzaw hafna mill-kawzi ta' libelli quddiem dina l-Qorti.

Il-Qorti ma tistax ma tosservax illi kawzi ta' libell huma kawzi delikati hafna fejn ir-reputazzjoni ta' persuna, tkun min tkun, qieghda tigi kkunsidrata mill-Qorti, u ghalhekk huwa importanti illi tali tip ta' kawzi jinstemghu u jigu decizi fi zmien qasir hafna, sabiex il-hsara, jekk tkun saret, tkun tista tigi rimedjata fi zmien qasir.

Sfortunatament, madankollu, dina l-Qorti ma tistax ma' tinnutax illi hemm tentattiv koncertat sabiex tali tip ta' kawzi jittawwlu inutilment u jinzammew 'in limbu' ghal snin shah.

Tali agir da' parte ta' min huwa kkoncernat ma qieghed jaghmel xejn aktar hlief jitfa dell ikrah fuq l-amministrazzjoni kollha tal-Qorti u certament il-Gudikatura mhux dejjem hija responsabbli ghal

tali nuqqasijiet, ghalkemm hija l-Gudikatura li tigi ggudikata mill-poplu in generali, peress illi johrog car, partikolarment fil-kawzi ta' libelli, illi l-partijiet u l-avukati taghhom huma generalment parti mir-raguni ghal tali dilungar esagerat u inutili.

Hija inaccettabbli illi kawza ta' libell iddum sebgha snin sabiex tasal ghall-istadju li tkun tista tinghata sentenza minn Gudikant.

Ikkunsidrat

Kif intqal fil-kawza '**Axel Springer AG vs Germany**', deciza mill-Grand Chamber tal-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fis-7 ta' Frar 2012:-

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.

Kif intqal fis-sentenza **Ligens vs Austria**, mhaddna mill-Qorti Maltin ukoll:-

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 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.

Finalment, kif qalet dina l-Qorti fil-kawza **Norman Lowell vs Saviour Balzan et** deciza fil 5 ta' Ottubru 2015

Jirrizulta ampjament ippruvat illi r-rikorrent huwa persuna politika u ghalhekk, skond gurisprudenza ben stabbilita, huwa soggett ghall-livell ta' kritika ampja jekk mhux anke provokattiva, peress illi, ladarba persuna taghzel li taghti servizz fil-hajja pubblika bhala politiku, huwa ghandu jkun lest illi jigi kritikant ghall-kummenti u veduti tieghu, liema kritika tista tkun anke harxa, peress illi huwa essenzjali ghall-pajiz demokratiku bhalma hija dik Maltija illi jigi assikurat li mhux biss kullhadd ghandu d-dritt ta' liberta ta' espressjoni, izda, aktar u aktar, illi kullhadd ikollu wkoll id-dritt illi jigi mgharraf dwar kull informazzjoni u fatt li tista b'xi mod, tolqot il-kredibilita' ta' persuna politika.

Ikkunsidrat

Kif gia irrilevat aktar 'l fuq il-Qorti, huwa ppruvat illi r-rikorrenti huwa persuna politika u ghalhekk, kwantu hekk, hija soggetta ghall livell ta' kritika ferm oghla minn dik ta' persuna normali, u kull azzjoni illi tali persuna, in kwnatu politiku, taghmel fil-pubbliku hija soggetta ghall-kritika u kummenti, anke harxa jekk necessarju, peress illi daka huwa l-piz illi ghandu jgorr mieghu il-politiku fil-qadi tad-dmirijiet tieghu.

Il-Qorti tosserva wkoll illi fil-qari tal-bran li dwaru qieghed jilmenta ir-rikorrent kif ukoll l-artkolu kollu in generali, jidher car illi l-artikolu ma huwiex intiz sabiex jattakka lir-rikorrent biss, kif donnu ta' x'jifhem ir-rikorrent, izda qieghed jattakka it-tmexxija kollha ta' dan iz-zmien tal-Partit Laburista, li tieghu, ftit qabel, Dr Joseph Muscat kien ghadu kif gie elett bhala Kap.

Il-Qorti tosserva wkoll illi l-kritika illi saret da parte ta' l-intimata hija espressjoni ta' l-opinjoni taghha u hija 'value judgment' u 'fair comment' taghha u mhux 'statement of fact' u ghalhekk, bhala tali, ghandhom jinghataw il-konsiderazzjonijiet taghhom meta qieghed jigi kkunsidrat jekk il-kliem li dwarhom qieghed jilmenta r-rikorrent humiex malafamanti u libelluzi fil-konfront tieghu.

Kif jghid **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.

Il-Qorti, wara illi fliet il-provi prodotti quddiemha, ma ghandha ebda dubju illi l-kumment ta' l-intimata ghandu jitqies bhala 'fair comment', u ghalhekk tikkunsidra illi ma humiex libelluzi u malafamanti fil-konfront tar-rikorrent.

Konkluzjoni

Il-Qorti

Wara ili rat il-provi kollha prodotti quddiem dina l-Qorti,

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

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet ta' l-intimata u

Tichad it-talbiet attrici.

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

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur