



**QORTI TAL-MAGISTRATI (GHAWDEX)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**Magistrat Dr. Joseph Mifsud B.A. (Legal & Int. Rel.),
B.A. (Hons), M.A. (European), LL.D.**

**Il-Pulizija
(Spettur Frank Anthony Tabone)**

vs.

Mario Degiorgio

Kaz Numru: 98/2013

Illum 2 ta' Dicembru 2015

Il-Qorti,

Rat l-imputazzjonijiet migjuba kontra l-imputat **Mario Degiorgio**, iben Francis u Mary nee' Mifsud, imwield il-Floriana, fil-15 ta' Awissu 1956, residenti 'The Residency', Triq Gerry Zammit, Gzira, Malta u detentur tal-karta tal-identita' bin-numru 554556(M), akkuzat talli fit-23 ta' Awwissu 2012 u fil-granet u fix-xhur ta' qabel gewwa diversi postijiet f'dawn il-gzejjer, f'hinijiet differenti b'diversi atti maghmulin fi zminijiet differenti, li jiksru l-istess

disposizzjonijiet tal-ligi, u li gew maghmula b'rizoluzzjoni wahda:

1. Bil-hsieb li jtellef jew inaqqas il-gieh ta' George Zammit liema ingurja saret b'kitba, b'figuri u/jew b'disinji mxandrin jew li gew esposti fil-pubbliku;
2. U aktar talli fl-istess data, lok, hin u cirkostanzi b'xi mezz permezz ta' publikazzjoni jew tqassim f'Malta ta' stampat, ikun x'ikun il-post li minnu origina l-istampat, jew bil-mezz ta' xandir ghamel malafama lil persuna ta' George Zammit.

Rat illi din il-kawza giet assenjata lil din il-Qorti kif preseduta b'digriet datat 30 ta' Gunju 2015 moghti mis-Sinjuriya Tieghu l-Prim'Imhalled.

Rat id-dokumenti esebiti u l-atti processwali kollha.

Rat is-sottomissjonijiet finali bil-kitba tal-Prosekuzzjoni (*a fol. 94 et seq.*), tal-Parte-Civile (*a fol. 97 et seq.*) u tad-Difiza (*a fol. 102 et seq.*).

Din il-Qorti fl-ahhar seduta fil-15 ta' Ottubru 2015, tat l-opportunita' lill-partijiet qabel il-partijiet kienu mistiedna jaghmlu nota ta' sottomissjonijiet finali bil-kitba sabiex issir apologija. L-imputat accetta din l-opportunita' li jitlob skuza lill-kwerelant (il-Qorti setghet tinnota li ghalkemm l-imputat ghadu mwegga' ghall-agir tal-kwerelant fil-konfront ta' martu), wera l-intenzjoni tieghu illi jiehu b'idejn il-kwerelant.

Il-kwerelant xorta wahda baqa' jsostni illi ried ikompli bil-proceduri.

Il-Qorti hawn taghmel referenza ghal dak li qalet l-awtrici Simone de Beavoir li jghodd ghal din il-kawza odjerna:

One's life has value as long as one attributes value to the life of others by means of love, friendship and compassion.

Il-Qorti qabel tidhol fil-mertu tal-kaz se taghmel analizi dwar l-espressjoni hielsa tal-kelma u dan anke ghall-fatt li tul dawn il-proceduri l-kwerelant ghamel referenza ghall-fatt li hu kien persuna pubblika meta rrefera dwar kif l-imputat prova "jaghamillu l-hsara" fil-Kunsill Lokali fejn kien iservi.

Il-Qorti tirrimarka li fejn tidhol reputazzjoni jrid jiehu hsiebha l-ewwel u qabel kollox l-individvu personalment ghaliex wara jkun inutli li issir akkuza fil-konfront ta' haddiehor li kien kagun tat-telf tar-reputazzjoni u jistenna lill-Qorti tkun ta' kenn ghalih.

KONSIDERAZZJONIJIET DWAR L-ESPRESSJONI HIELSA TAL-KELMA

Din hija l-ewwel opportunita' ghal din il-Qorti li tesprimi ruhha dwar id-dritt tal-espressjoni tal-kelma kemm ilha tiffirma parti mill-Gudikatura u dan wara snin twal f'hidma gurnalistika li mhux l-ewwel darba Qrati varji ddefendew id-dritt tal-espressjoni tal-kelma tal-esponent.

Il-Qorti tinnota is-sitwazzjoni Kontradittorja ezistenti f' Malta, fejn, f' socjeta' demokratika li thaddan it-twemmin tal-liberta' tal-espressjoni, persuna illi tesprimi l-veduti taghha fil-pubbliku hija soggetta ghall-possibilita' illi jittiehdu kemm proceduri civili kif ukoll kriminali kontra taghha, b' dawn tal-ahhar sahansitra ghad hemm sitwazzjonijiet li jwasslu ghal sentenza ta' habs effettiv.

Din il-Qorti tifhem li ghaddej process sabiex ikun hemm riforma fejn jidhlu d-drittijiet tal-espressjoni tal-kelma u hawn taqbel ma' dak li ssostni l-Organizzazzjoni ewlenija dwar id-difiza ta' dawn id-drittijiet **Article 19**:

"ARTICLE 19 argues that all criminal defamation laws breach the guarantee of freedom of expression. However, in recognition of the fact that many countries do have criminal defamation laws which are unlikely to be repealed in the very near future, it has suggested interim measures to attenuate their impact until they are abolished:

1. No-one should be convicted for criminal defamation unless the party claiming to be defamed proves, beyond a reasonable doubt, the presence of all the elements of the offence, as set out below;

2. The offence of criminal defamation shall not be made out unless it has been proven that the impugned statements are false, that they were made with actual knowledge of falsity, or recklessness as to whether or not they were false, and that they were made with a specific intention to cause harm to the party claiming to be defamed;

3. *Public authorities, including police and public prosecutors, should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official;*

4. *Prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practise journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement."*

Il-Qorti taghmel referenza ghad-dokument tad-Dipartiment tad-Drittijiet tal-Bniedem u Affarijiet Legali tal-Kunsill tal-Ewropa tal-2012, **Study on the alignment of laws and practices concerning defamation with the relevant case-law of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality** fejn intqal li:

The legislator is obliged to take account of the consensus on the decriminalisation of defamation in international organisations and attend to the quality of the law governing defamation, so that citizens may foresee the consequences which a given action may entail and regulate their conduct. The laws must also include the necessary procedural safeguards to provide proper protection for the exercise of the right to freedom of expression. In other terms "(...) any regulation should itself comply with the requirements set out in Article 10 of the European Convention on Human

Rights and the standards that stem from the relevant case law of the European Court of Human Rights”.

As to the courts, the alignment process requires them to exercise considerable restraint in the application of provisions which restrict freedom of expression and to apply the principle of proportionality with due rigour¹.

Din il-Qorti tappella sabiex il-Parlament Malti jillegisla kemm jista' jkun malajr halli l-legislazzjoni ta' pajjizna tirrifletti dak li jipproponi l-Kunsill tal-Ewropa u istituzzjonijiet ohra li pajjizna hu affiljat maghom.

Espressjoni hielsa tal-kelma f'socjeta' demokratika fis-seklu 21

L-Espressjoni hielsa tal-kelma illum hu kuncett li dahal sewwa fid-dizzjunarju taghna. Imma xi tfisser espressjoni hielsa tal-kelma?

Robert Pullan fil-ktieb ippubblikat fl-1994 – **Guilty secrets: Free speech and defamation in Australia** – jsostni li:

“Speech expresses the self and like the self is free ... Words are our ... connection to each other and to all that has gone before. Our speech is inherently free because violating this connection violates our humanity. When we are censored we are diminished ... Free speech seems part of our human programming whatever the culture. (p.11)”

¹ CDMSI(2012)Misc11

Thomas Emerson fil-ktieb **The system of freedom of expression** isostni li:

“Freedom of expression is essential as a means of assuring individual self-fulfillment. The proper end of man is the realisation of his character and potentialities as a human being. To cut off [a person’s] search for truth, or his expression of it, is to elevate society and the State to a despotic command ... and to place [her or him] under the arbitrary control of others. (p.6)”

Izda dan kien rifless diga’ fil-kitbiet ta’ John Stuart Mill fil-ktieb **On Liberty** meta sostna li:

“The peculiar evil of silencing the expression of an opinion is that it is robbing the human race, posterity as well as the existing generation – those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error. (p. 76)”

Fair comment

Peter Carey fil-ktieb **Media Law** ippubblikat minn Sweet & Maxwell isostni li d-difiza ta’ fair comment tirnexxi meta l-konvenut juri li dak li kiteb jew xandar kien:

“a statement, in the form of opinion, which is based on true facts, and which is made with fairness, on a matter of public interest and without malice”.

Fil-kawza **Schwabe vs. Austria** (1992) il-Kummissjoni tal-Qorti Ewropea tad-Drittijiet tal-Bniedem kif ikkwotata fil-ktieb Harris, Boyle, Warbrick, **Law of the European Convention of Human Rights**, p. 397 et seq rriteniet illi:

“Politicians must be prepared to accept criticism even if far fetched but that such criticism must be founded on correct factual statements. It somewhat mitigated what correctness required when it said ‘In a short contribution to a discussion and the behaviour of politicians and the political morals not every word can be weighed to exclude any possibility of misunderstanding. The Court conflated the facts and opinion of Schwabe’s article – they amounted to a value judgement for which no proof of truth is possible”.

Wara s-sentenzi tal-Qorti Ewropea tad-Drittijiet tal-Bniedem **Castells u Thorgeirson** kien stabilit il-principju li:

“a claim for defamation is weaker if the allegedly defamatory statement was made in response to a statement that itself was provocative or inflammatory”

Fl-ispirtu ta’ dak propost fir-*Regional Conference on Defamation and Freedom of Expression* organizzata mill-Kunsill tal-Ewropa li ltaqghet fi Strasbourg, 17-18 ta’ Ottubru 2002:

“the burden of proof should in principle rest with the plaintiff in cases of defamation. Where the burden of proof is placed on the defendant, the latter should be able to be exonerated from his/her responsibility if he/she is able to provide reasonable evidence that he/she had acted reasonably and in good faith”

“there has been a general agreement over the danger of legal rules that may jeopardize the watching role of the media – the chilling effect”

“governments and powerful groups in society need to be exposed to open and critical scrutiny, including to the extent of fair comment by journalists on the motives and strategies of those who exercise power. This may gravely offend some, but without it the public watchdog role of media would be profoundly damaged. Laws that inhibit this process have no place in a democratic society.”

“media do not always play their role very well. Given the poor quality and poor performance of some media outlets, the watchdog sometimes looks more like a political or corporate poodle”.

Rapport tar-Rapportur Aiden White tal-working group li ddiskuta *Media in a Democratic Society: Is There a Possible Balance between the freedom of Expression and the Protection of Human Rights* f'Konferenza tal-Kunsill tal-Ewropa – *The Media in a democratic society: reconciling freedom of expression with the protection of human rights* – Luxembourg – 30 Sept. – 1st Oct. 2002

Gurisprudenza Maltija

Kif iddikjara l-Imhalled J.R. Micallef fis-27 ta' Settembru 2002
Onor. Dr. Gavin Gulia vs David Agius u l-Partit Nazzjonalista Citazz. Nru. 1286/00JRM

“L-azzjoni ta’ libell mahsuba fil-Kap 248 trid titqies bhala azzjoni specjali li l-ghejjun taghha fil-bidu kienu mahsuba li jwettqu forma ta’ kontroll dwar dak li jinkiteb jew jigi mxandar fil-gurnali. Mal-medda tas-snin, ix-xejra bdiet iddur favur il-harsien tal-fama tal-individwu minn dak li jista’ jinkiteb jew jinghad dwaru fil-mezzi stampati, fid-dawl tal-jedd l-iehor fundamentali tal-espressjoni hielsa ta’ dak li jkun. L-azzjoni ta’ libell hija ghalhekk azzjoni eccezzjonali li wiehed idur ghalha biss f’kaz fejn l-unur u l-gieh ta’ persuna jkunu gew imkasbrin jew miftuha ghad-disprezz tal-pubbliku b’dak li jinghad jew jigi mxandar dwaru. Fil-qafas ta’ dawn il-parametri, u kif imfissra mill-aktar sentenzi aggornati tal-Qrati Maltin u barranin dwar din il-kwistjoni, l-ghoti ta’ rimedju li jinghata taht azzjoni bhal din qieghed kulma jxaqleb lejn il-jedd tal-espressjoni hielsa. Il-htiega tal-harsien mil-ligi lill-unur u r-reputazzjoni ta’ persuna m’ghandux, b’riflessjonijiet u induzzjonijiet bla qies, johonqu l-espressjoni hielsa”

Fl-istess sentenza jkompli jinghad *“illi t-tifsir moghti mill-Qorti Ewropea tad-Drittijiet tal-Bniedem f’ghadd ta’ kazijiet ... fost l-ohrajn u b’mod ewlieni, is-siwi tad-dibattitu politiku hieles bhala wahda mis-sisien fejjieda ta’ stat demokratiku. Dan it-tifsir dejjem gharaf bejn kritika li ssir fil-konfront ta’ persuna li hija mdahhla fil-hajja pubblika (jew politika) u persuna li m’hijiex”* (enfasi tal-qorti u dan ghaliex il-kwerelant f’dawn il-proceduri hu persuna mdahhal fil-politika u anke tul il-kawza spjega (a fol. 99) li l-imputat *“avvicina ukoll lil membru tal-Kunsill Lokali li kien jiforma parti minnu George Zammit u ghalhekk ipprova ihammgu ma’ dawk il-persuni”*.

Fil-kawza **Mons. Anton Gauci vs Michael Schiavone et** (App. Civ. 8 ta' Novembru 1995) intqal illi meta l-ingurja hija diretta kontra persuna fizika, *"il-margni ta' tolleranza twessa', u mhux kull kumment qawwi u anki azzardat jikkwalifika bhala ngurja", ... "b'dan li l-Qorti ghandha tippermetti latitudini fil-kritika li tista' tkun mhux biss iebsa izda wkoll azzardata entro l-limiti accettati tad-dicenza permessibbli f'socjeta' demokratika"*

Dik il-gurisprudenza giet elaborata f'diversi sentenzi f'dawn l-ahhar snin, fosthom is-sentenza fil-kawza fl-ismijiet **Vincent Borg vs Victor Camilleri et**, (App. Viv. 15 ta' Novembru, 1994, (Vol. LXXVIII. ii.372) *"il-bzonn li is-socjeta' demokratika jithalla spazju sufficjenti ghall-liberta' li wiehed jikkritika u li jsemmi l-opinjoni u l-gudizzju tieghu, mal-bzonn l-iehor, xejn anqas mehtieg, tad-difiza tar-reputazzjoni, l-unur, l-isem tajjed, li kull persuna f'socjeta' demokratika ghandu kull dritt li jgawdi"*

"Il-linja medjana fejn propio id-dritt ta' espressjoni libera' taccedi dak ragonevoli u ghandha tigi punita, ghax issir minflok ksur tad-drittijiet ta' haddiehor; huwa propio ... fejn l-espressjoni tigi bbazata fuq fatti skorretti" – **Onor. Charles Buhagiar vs Ray Bugeja** – P.A. N.A. 19 ta' Jannar 1996

"F'materja ta' ingurja bl-istampa ghandha issir distinzjoni bejn allegation of fact u dak li huwa comment. Biex tirnexxi id-difiza tal-verita' tal-konvicju, il-fatt ghandu jigi ppruvat. Il-comment biex ikun gustifikat irid ikun fair and bona fide u ma jistax ikun fair u bona fide jekk il-fatt attribwit lill-kwerelant ma jkunx veru" – **Reginald Miller vs Harold Scory** – XXXVI.IV.843

Fil-kawza **Il-Pulizija vs Joseph Oliviero Munroe** – XXXIII.IV.824 inghad illi:

“F’materja ta’ ingurja permezz ta’ l-istampa l-ingurja tista’ tirrizulta permezz ta’ innuendo. L-inuendo jista’ jkun ta’ zewg xorta jigifieri:

(a) dak li permezz tieghu tigi identifikata l-persuna li ma tkunx issemiet b’isimha, u

(b) dak li permezz tieghu jigi stabilit is-sens tal-kliem ritenut ingurjuz mill-persuna li tippretendi li giet ingurjata”.

Fil-Qorti tal-Appell – Onor. Dr Joseph M Fenech vs Louis Cauchi et A.K. (JSP) 16 ta’ Jannar 2002 jinghad:

*“Il-kritika hi fundamentali f’socjeta’ demokratika, pero’ dejjem hemm il-limiti. Dawn il-limiti f’kazijiet bhal dan li jkunu ta’ interess pubbliku generali, ghandhom ikunu wesghin kemm jista’ jkun, b’mod partikolari meta hemm involuti persuni pubblici bhal ma huwa l-attur. F’dan ir-rigward il-Gately (op.cit.) jghid – *In cases of comment on a matter of public interest the limits of comment are very wide indeed. This is especially so in the case of public men.* Il-Gately jispecifica inoltre illi – *Unless there is some clear evidence of malice or some misstatement of fact, no action should be commenced, however severe the terms of the criticism may be.* Ghar-rigward ta’ x’jikkostitwixxi misstatement of fact l-istess Gately ighid – *It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.”**

Gurisprudenza tal-Qorti Ewropea tad-Drittijiet tal-Bniedem

Il-Qorti Ewropea tad-Drittijiet tal-Bniedem nistghu nqisuha tarka tal-dritt tal-espressjoni tal-kelma u kien ghaqli l-legislatur Malti li minbarra li dan il-kuncett kien introdott sa minn kmieni fil-Kostituzzjonijiet taghna haseb biex il-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem tkun ukoll inkorporata fil-ligijiet taghna. B'hekk ic-cittadin Malti hu protett mill-Kostituzzjoni izda wkoll b'din il-Konvenzjoni. Ghalhekk l-Amministrazzjoni tal-Gustizzja f'Malta li dejjem kienet difiza ta' dawn id-drittijiet issa anke ghandha l-gwida ta' dak li jigri barra minn xtutna. Mhux biss, izda dak deciz fil-Qorti Ewropea tad-Drittijiet tal-Bniedem illum jorbot ukoll lill-gudikant Malti ghaliex jaf li d-decizjoni tieghu tista' tkun skrutinizzata jekk il-kaz jittiehed fil-Qorti Ewropea tad-Drittijiet tal-Bniedem mill-persuna li thoss li f'pajizna ma nghatax fair deal fil-qorti taghna.

Artikolu 10 tal-Konvenzjoni Ewropea tad-drittijiet tal-bniedem jipprovdi li:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such

formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Din il-Qorti se telenka x’qalet il-Qorti Ewropea tad-Drittijiet tal-Bniedem fuq il-materja li ghandna quddiemna.

“... the general interest in a public debate which has a serious purpose outweighs the legitimate aim of protecting the reputation of others, even if such debate involves the use of wounding or offensive language.” – Appl. No. 19983/92, **L. De Haes and H. Gijssels v. Belgium**, report of 29 November 1995, para. 63

“freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders”-Freedom of Expression in Europe – Human rights files No. 18 (revised) – pg 11

“the existence of facts can be demonstrated, whereas the truth of value-judgements is not susceptible of proof” para. 46 - **Lingens** judgement of 8 July 1986, Series A No. 103.

“the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern” - **Barford** judgement of 22 February 1989, Series A No. 149, para. 29

“as the statements of the applicant were judgements of value, the interference was not necessary in a democratic society” -

Oberschlick judgement (No. 1) of 23 May 1991, Series A No. 204

“the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so” (para. 35) - **Jersild** judgement of 23 September 1994, Series A No. 298, para. 31

“genuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual”- **Ozgur Gundem** judgement of 16 March 2000, Reports 2000-III, para. 43

“news reporting based on interviews constitutes one of the most important means whereby the press is able to play its vital role of public watchdog” para. 57 -**Bergens Tidende and other** judgement of 2 May 2000, Repots 2000-V, para. 51

“A general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation was not reconcilable with the press’s role of providing information on current events, opinions and ideas.”-**Thoma** judgement of 29 March 2001, para. 64

“a reprimand for the previous exercise by the applicant of his right to freedom of expression and, moreover, had a chilling effect on the

exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future” - Wille judgement of 28 October 1999, Repots 1999-VII, para. 5

Defamazzjoni f’pajjizi ohra

Fl-Olanda l-Qorti Suprema tat lista ta’ fatturi varji li l-qorti trid tanalizza biex tiddeciedi kazijiet ta’ defamazzjoni:

“(1) the nature of the published criticisms and the seriousness of the impact they may be expected to have on the person to whom they refer;

(2) the public interest in the situation which the publication purported to expose;

(3) the extent to which the criticisms were supported by facts available at the time the criticisms were published;

(4) the phrasing of the criticisms;

(5) the availability of other means, less damaging to the person against whom the criticisms were made, to expose the information;

(6) the likelihood that the published information would have been disclosed by another source;

(7) the credibility in the public's perception of the person who made the criticisms; and

(8) the position in society of the person against whom the criticisms were made (the "public figure" concept).²

Fl-Awstralja din it-tema ukoll kienet diskussa mill-oghla qorti u kien dikjarat:

"Inherent in the Constitution's doctrine of "representative government" is an implication of the freedom of the people of the Commonwealth to communicate information, opinions and ideas about all aspects of the government of the Commonwealth, including qualifications, conduct and performance of those entrusted (or who seek to be entrusted) with the exercise of any part of the legislative, executive or judicial powers of government which are ultimately derived from the people themselves.³

Il-qorti Kostituzzjonali Spanjol adotta d-duttrina ta' "public figure" fil-kaz **Navazo** STC 107/88, para 2 :

"[T]he right to honour ... is proportionately weakened as an external limit [to freedom of expression] to the extent to which those who seek to exercise the right are public figures, exercise public functions or are involved in matters of public interest. ... [T]his is required by the political pluralism, tolerance and spirit of liberalization without which a democratic society cannot exist."

Tajjeb li hawn wiehed jikkwota mill-kaz celebri fl-istati Uniti tal-Amerika **New York Times v. Sullivan** 376 U.S. 254 (1964) fejn il-Qorti Suprema elaborat dwar il-kuncett tal-persuna pubblika:

² HR 27 Jan. 1984, NJ 1984, 802; HR 8 March 1985, NJ 1986, 437.

³ National News Pty Ltd v. Wills (1992) 66 ALJR 658, 681

“We have no difficulty in distinguishing among defamation plaintiffs. The first remedy of any victim of defamation is self-help - using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury and the state interest in protecting them is correspondingly greater.

More important[ly] ... , [a]n individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer scrutiny than might otherwise be the case. [Those] classified as public figures stand in a similar position.

Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehoods concerning them.

KONSIDERAZZJONIJIET LEGALI

Jus Retorquendi

Il-Qorti f’ dan il-kaz qeghda zzomm quddiem ghajnejha ukoll il-kuncett tal-*jus retorquendi* ghaliex jidher li dan il-kaz wasal

sa hawn wara li l-kwerelant wettaq azzjoni mmorali fil-konfront tieghu meta marlu ma' martu, meta l-imputat u l-kwerelant kienu hbieb kbar "tant kienu hbieb illi mhux l-ewwel darba l-imputat stieden lil George Zammit sabiex jiekol id-dar tieghu flimkien mal-familja tieghu. Madanakollu, din il-hbiberija sfaqqat fix-xejn meta l-imputat sar jaf illi l-kwerelant kellu relazzjoni intima ma' martu. Bla dubju din l-ahbar halliet l-imputat ferm iddispjacut mhux biss minhabba l-fatt li l-mara tieghu kellha x'taqsam ma' xi haddiehor izda wkoll minhabba l-fatt illi gie tradut mill-habib tieghu li kien stmat bhala habib kbir. L-imputat illi kien imwegga' u ddispjacut kien informa lill-ulied il-kwerelant b'dak li kien gara u dan permezz ta' facebook. Wiehed ghandu jinnota illi l-ghan tal-imputat kien illi jinforma u mhux li jippublika din l-ahbar u wisq anqas li jnaqqas il-gieh tal-kwerelant. Tant hu hekk, illi kieku l-imputat kien jaghzel li din l-informazzjoni jiktibha fuq il-wall tal-facebook ta' ulied il-kwerelant jew li jaghmel uzu minn mezzi aktar facli u accessibli sabiex iservi ta' dannu ghar-reputazzjoni u l-integrita' tal-kwerelant, fejn wara kollox kien il-kwerelant stess illi bl-agir tieghu hassar ir-reputazzjoni tieghu kif ukoll ir-relazzjoni tieghu kemm mal-imputat kif ukoll ma' familta" (a fol. 97 et seq.).

Il-jus retorquendi hija difiza valida rikonoxxuta mill-qrati u ladarba r-ritorsjoni teskludi d-dolo, kwindi teskludi l-punibilita' ghal min ikun irreattiva.

Il-principju addottat mill-Qrati taghna huwa dak illi f'materja ta' ritorsjoni tista' tikkontrobatti diffamazzjoni generika b'attribuzzjoni ta' diffamazzjoni generika ohra, tant illi:

"biex ikun ammess id-dritt ta' ritorsoni f'materja ta' ingurja mhux mehtieg illi l-ingurja ribattuta tkun tal-istess gravita' bhal dik

ricevuta. Id-dritt ta' ritorsjoni jirrikjedi zewg kundizzjonijiet indispensabbli, wahda illi jkun hemm ingurja precedenti, u l-oħra illi min jirritorci ikollu l-animu li jiddefendi ruhu u mhux li joffendi"- **Joseph Orlando - vs - Avv. Dottor Enrico Mizzi**; Vol. XXIX.I.843

Aktar ricenti l-Qorti tal-Appell ikkonferma sentenza tal-Imhalled Victor Caruana Colombo Cit. 925/89VCC, **Lino Spiteri MP vs Raymond Bugeja u Dr. Austin Bencini LL.D** bhala editur u stampatur tal-gurnal The Times:

"f'dawn ic-cirkostanzi Argus kiteb l-artikolu fil-limiti imposti mid-dritt ta' ritorsjoni, cioe' bl-animu mhux tant li jingurja, izda biss li jiddefendi l-unur tieghu li kien gie attakkat mill-attur".

Kwerela

Dwar il-kaz odjern, il Qorti taghmel referenza għall-Artikolu 31 tal-Kap 248 illi tistabilixxi illi:

"L-azzjoni kriminali għal-kull reat taht l-artikolu 11 u 21 jistghu jinbdew biss bi kwerela tal-parti offiza."

L-artikolu 537 tal-Kap 9 tal-Ligijet ta' Malta, reza applikabbli għall-kwereli wkoll permezz tal-Artikolu 539, jipprovdi illi denunzji u kwereli jistghu isiru kemm verbalment kif ukoll bil-miktub. L-istess Artikolu 537, madanakollu, jipprovdi illi meta denunzja ssir bil-fomm "*hija għandha, hlief fil-kazijiet li ma jkunux iridu dewmien, titnizzel bil-miktub minnufih u għandha tigi iffirmata mid-denunzjant."*

Il-Qorti tosserva illi l-proceduri odjerni, inbdew wara li kienet ippresentata l-kwerela ta' George Zammit fit-28 ta'

Gunju 2013 (a fol. 20), li huwa l-bazi illi fuqha l-prosekuzzjoni mexxiet dan il-kaz.

L-ewwel imputazzjoni Artikolu 252(1) u (3) tal-Kapitolu 9 tal-Ligijiet ta' Malta)

Illi Artikolu 252(1) u (3) tal-Kapitolu 9 tal-Ligijiet ta' Malta jipprovdu s-segwenti:

(1) "Kull min, bil-ħsieb li jtellef jew inaqqas il-gieh ta' xi hadd, iweggħu bi kliem, b'gesti, b'kitba, b'disinji jew b'xi mod ieħor, jeħel, meta jinsab ħati, il-piena ta' prigionerija għal zmien mhux aktar minn tliet xhur jew il-multa.

[...]

(3) Jekk l-ingurja ssir b'kitba, b'figuri jew b'disinji mxandrin jew esposti fil-pubbliku, il-ħati jeħel il-piena ta' prigionerija għal zmien ta' mhux izjed minn sena".

Illi Artikolu 256(1) tal-Kapitolu 9 tal-Ligijiet ta' Malta jghid hekk:

"Fil-kazijiet ta' ingurja li ssir bil-mezz tal-Istampa, jgħoddu d-disposizzjonijiet tal-Att dwar l-Istampa.

Illi fid-decizjoni fl-ismijiet **Il-Pulizija vs. Anton F. Attard**, mogħtija fl-10 ta' Lulju 2006, il-Qorti tal-Appell Kriminali qalet hekk:

"Issa, din il-Qorti, mingħajr ezitazzjoni, taqbel ma' l-appellant li ingurja jew malafama permezz ta' stampat, bħalma huwa ktieb li jigi ppublikat, ma taqax u ma tistax tigi punita taht l-Artikolu 252(1) (jew addirittura taht l-

Artikolu 252(3)) tal-Kodici Kriminali. L-Artikolu 256 huwa car fil-portata tieghu u dejjem gie interpretat mill-Qrati ta' Gustizzja Kriminali li, meta l-ingurja ssir bil-mezz ta' l-istampa (b'mod li l-ingurja jew il-malafama tkun allura tammonta ghal dak li komunement jissejjah libell), hi applikabbli il-Ligi dwar l-Istampa u huma applikabbli d-disposizzjonijiet tal-Kap. 248".

Illi, kif diga nghad, il-kawza odjerna tirrigwarda messaggi privati li ntbaghtu mill-imputat lill-ulied il-kwerelant permezz tal-facebook.

Illi, riferenza ghandha ssir ghad-decizjoni fl-ismijiet **Il-Pulizija vs. Joseph Zahra**, moghtija fit-22 ta' Settembru 2010, fejn il-Qorti tal- Appell Kriminali qalet hekk:

*"Din il-Qorti, bhalma ghamlet l-ewwel Qorti, sejra tirreferi ghas-sentenza fl-ismijiet **Il-Pulizija v. Joseph Sciberras** et deciza fl-20 ta' Jannar 1997 minn din il-Qorti diversament presjeduta (Vol. LXXXI.iv.91). F'dak il-kaz, l-imputazzjoni migjuba kontra l-kwerelati ghal malafama kienet taht il-provvedimenti tal-Press Act. Hemm il-kwerelati kienu qeghdin jargumentaw illi l-ittra mertu tal-kaz ma kinitx intiza ghac-cirkolazzjoni ossia sabiex jigi mxandar u ghalhekk kienu japplikaw id-disposizzjonijiet tal-Kodici Kriminali. Din il-Qorti ma laqghetx dan l-argument u qalet hekk:*

"Fil-fehma tal-Qorti, meta l-legislatur qed jitkellem dwar 'stampat b'tipi tipografici' ('printed in typographical characters', fit-test Ingliz) l-enfasi mhix fuq il-process tipografiku izda fuq ir-rizultat li wiehed jara stampat quddiemu, jigifieri li jara r-rizultat bhalma jhallu t-tipi li

jintuzaw fil-process tipografiku. Jekk il-process ikunx dak tipografiku klassiku ('composing type and printing from it', Collins English Dictionary, 'v. typography'), jew process jew sistema, sia mekkanika kif ukoll elettronika jew kombinazzjoni tat-tnejn, li taghti rizultat finali simili ghal dak tipografiku (bhal, per eżempju, phototypesetting, l-uzu ta' typewriter, l-uzu ta' printer tal-kompjuter, diversi forom ta' offset printing) hu rrelevanti.

Kif inghad, l-ittra in kwistjoni (a fol. 3 tal-process) jidher li giet stampata bil-kompjuter b'tipi tipografici u ghalhekk tikkwalifika bhala 'stampat' ghall-finijiet tal-Kap. 248. Ghal din il-konkluzjoni jidher ukoll li waslet ghalha l-Prim'Awla tal-Qorti Civili fis-sentenza taghha tas-7 ta' Mejju, 1991, fil-kawza fl-ismijiet **Dr. Joseph M. Ciappara vs. Joseph Zammit** u li ghalha ghamlet referenza ukoll l-Ewwel Qorti fis-sentenza appellata. Jekk, mill-banda l-ohra, ittra saret bit-typewriter, din ukoll tammonta ghal kitba stampata b'tipi tipografici (ara f'dan is-sens ukoll, ghalkemm taht l-allura Kap. 117, is-sentenza tal-Qorti Kriminali li kienet allura tisma' appelli minn sentenzi tal-Qorti tal-Magistrati) tat-18 ta' Marzu, 1961 fl-ismijiet **Tabib Dottor Henry Copperstone et al vs. Publio Schembri**);

Kwantu ghar-rekwizit tal-pubblikazzjoni, l-imsemmi Artikolu 2 tal-Kap. 248 jiddefinixxi publikazzjoni bhala li tfisser: 'Kull att li bih kull stampat jigi jew jista' jigi kkomunikat jew imgharraf lil xi persuna jew li bih kliem jew immagini vizwali jigu mxandra'.

L-appellanti jikkontendu li l-ittra kienet 'komunikazzjoni ufficjali ta' natura privata' mibghuta minnhom lill-kap tal-

Gvern u li ma kinitx għall-finijiet ta' jekk hemmx 'pubblikazzjoni' fis-sens tal-Kap. 248. Stampat jigi ppubblikat anke jekk jigi kkomunikat jew imgharraf lil persuna wahda. Għalhekk fetahx l-ittra l-Prim Ministru personalment jew xi membru tas-segretarjat tieghu hi wkoll konsiderazzjoni rrelevanti galadarba l-fatti malafamanti ma kinux qed jigu attribwiti lill-Prim Ministru".

Illi dak li gie kwotat hawn fuq jista' jigi applikat mutatis mutandis għal kawza odjerna. B'hekk il-messaggi a fol. 22 et seq., tikkwalifika bhala 'stampat' għall-finijiet tal-Kapitolu 248.

B'hekk kull akkuza li talvolta setghet tigi dedotta kontra l-imputat kellha f'dan il-kaz tkun akkampata taht "The Press Act", Kapitolu 248 tal-Ligijiet ta' Malta u mhux taht l-Artikolu 252 tal-Kodici Kriminali.

M'hemmx dubju għalhekk li l-ewwel (1) imputazzjoni kif migjuba kontra l-imputat, cioe' taht l-Artikolu 252 tal-Kapitolu 9 ma tistax tirnexxi. Il-Qorti tista' tieqaf hawn u m'hemmx raguni ghala għandha tikkunsidra l-*animus injuriandi* fir-rigward tal-imsemmija imputazzjoni.

Tenut kont ta' dan, ma tistax tinstab htija fl-imputat fir-rigward tal-ewwel (1) imputazzjoni migjuba fil-konfront tieghu u b'hekk l-imputat ser jigi liberat mill-imsemmija imputazzjoni.

It-tieni imputazzjoni Artikolu 3 u 11 tal-Kap 248 tal-Ligijiet ta' Malta

Id-Difiza qajmet l-eccezzjoni ta' preskrizzjoni ghal din l-imputazzjoni.

Din il-Qorti sejra l-ewwel tikkunsidra l-eccezzjoni ta' preskrizzjoni u jekk ikun hemm il-htiega tghaddi biex tidhol fil-mertu tal-ingredjenti li jsawwru r-reat.

Illi l-Artikolu 687 tal-kap 9 jghid illi *“iz-zmien ta' preskrizzjoni ghar-rigward ta' kull reat kriminali ghandu jkun sospiz mill-waqt li imputazzjoni u, jew att ta' akkuza jigu notifikati lill-persuna akkuzata jew imputata”* (enfasi tal-Qorti).

L-imputazzjoni taht l-Att dwar l-Istampa (Kap 248) tirreferi ghal incident li allegatament sehħ fit-23 ta' Awwissu 2012 u l-granet u x-xhur ta' qabel.

Il-komparixxi jidher li gie ffirmat mill-Ispettur Frank Anthony Tabone fit-3 ta' Awwissu 2013, bid-data ta' meta l-akkuzi gew prezentati fir-Registru tal-Qorti hi fit-23 ta' Awwissu 2013. Skont il-komparixxi id-data tas-smigh kellha tkun 27 ta' Novembru 2013. X'sar bejn it-23 ta' Awwissu 2013 u 27 ta' Novembru 2013 ma tezistix riferza li turi li l-imputat kien notifikat bl-akkuzi u bid-data tas-smigh. Li hemm fl-atti hu rikors tal-imputat ipprezentat fis-26 ta' Novembru 2013 fejn talab diferiment ghas-seduta tas-27 ta' Novembru 2013 ghax kien se jkun imsiefer. Ghalhekk il-Qorti qeghda tasal ghall-konkluzjoni li fis-26 ta' Novembru 2013 kien notifikat bid-data tal-ewwel seduta tas-smigh.

Ma tezistix riferta li turi li l-imputat kien notifikat fit-23 ta' Awwissu 2013 fi zmien sena minn meta sehħ l-allegat incident. Ghalhekk, in kwantu jirrigwarda t-tieni imputazzjoni l-perijodu preskrittiv huwa ta' sena skont l-artikolu 32 tal-Kapitolu 248 tal-Ligijiet ta' Malta li jghid "*L-azzjoni kriminali għal kull reat taħt it-Taqsima II ta' dan l-Att u l-azzjoni civili taħt l-Artikoli 28 u 29 jaqghu bil-preskrizzjoni wara li tghaddi sena*".

Bir-rispett kollu lejn il-prosekuzzjoni l-imputazzjonijiet hadu l-hajja meta kienu pprezentanti fir-registru tal-Qorti u mhux meta kienu fuq l-iskrivanija tal-Ispettur gol-Għassa tal-Pulizija. Il-Qorti ma taqbilx u mhux ha tilqa' l-argument tal-prosekuzzjoni (a fol 95) "*illi l-imputat Mario Degiorgio gie notifikat b'dak li kien ser jigi akkuzat nhar it-3 ta' Awwissu 2013 u dan qabel mal-istess imputat kien siefer fuq xogħol. Illi sussegwentament l-istess akkuzi gew prezentati fir-registru ta' din l-Onorabbli Qorti nhar it-23 ta' Awwissu 2013.*"

L-artikolu 687 tal-Kap 9 jagħmilha cara kif kien enfasizzat aktar 'il fuq li "*iz-zmien ta' preskrizzjoni għar-rigward ta' kull reat kriminali għandu jkun sospiz mill-waqt li imputazzjoni u, jew att ta' akkuza jigu notifikati lill-persuna akkuzata jew imputata*" (enfasi tal-Qorti). Persuna tkun akkuzata jew imputata meta l-imputazzjonijiet ikunu registrati fil-Qorti.

Għaldaqstant l-azzjoni hi preskritta.

Decide:

Għal dawn il-motivi l-Qorti wara li rat artikoli 252(1) u (3), 256(1) u 687 tal-Kapitolu 9 u artikoli 3, 11 u 32 tal-Kapitolu 248 tal-Ligijiet ta' Malta ma ssibx l-imputat hati tal-ewwel (1)

imputazzjoni u tiddikjara l-azzjoni fir-rigward ta' tat-tieni (2)
imputazzjoni preskritta u ghalhekk tillibera lil Mario
Degorgio minn dawn l-imputazzjonijiet.

Dr Joseph Mifsud
Magistrat