MALTA
Fil-Qorti tal-Magistrati (Malta)
Magistrat
Dr.Gabriella Vella B.A., LL.D.

Rikors Nru. 200/06VG

Martin Degiorgio

Vs

Daphne Caruana Galizia

Illum 9 ta' Dicembru 2015

Il-Qorti,

Rat ir-Rikors ipprezentat minn Martin Degiorgio fis-6 ta' Lulju 2006 permezz ta' liema jitlob li prevja dikjarazzjoni li bhala l-awtrici ta' l-artikoli intestati "Black shirts and blacker hearts" u "Martin and friends make the news", liema artikoli gew ippubblikati fil-gazzetta "The Malta Independent on Sunday" fl-edizzjoni tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006 rispettivament, Daphne Caruana Galizia hija responsabbli ta' malafama u libel fil-konfront tieghu stante li siltiet mill-imsemmija pubblikazzjonijiet kienu malafamanti u libelluzi peress illi l-iskop taghhom kien li jtellef jew inaqqas ir-reputazzjoni tieghu, l-istess Daphne Caruana Galizia tigi kkundannata thallsu dik is-somma li tigi likwidata mill-Qorti ai termini ta' l-Artikolu 28 tal-Kap. 248 tal-Ligijiet ta' Malta, liema somma ma teccedix hamest elef Lira Maltin (Lm5,000), bl-ispejjez u bl-imghaxijiet legali dekoribbli sad-data ta' l-effettiv pagament kontra Daphne Caruana Galizia, u b'riserva ghal kull azzjoni ohra spettanti lilu;

Rat ir-Risposta ta' Daphne Caruana Galizia permezz ta' liema teccepixxi li: (i) l-artikoli in kwistjoni ma humiex libelluzi fil-konfront ta' l-attur; (ii) fl-artikoli imsemmija hemm biss fatti li jigu pruvati u kummenti li jikkonsistu f'*fair comment* dwar kwistjonijiet ta' interess pubbliku u kritika accettabbli f'socjetà demokratika, kemm taht il-Ligijiet ta' l-Istampa kif ukoll taht il-Konvenzjoni Ewropeja dwar il-Libertajiet Fondamentali u d-Drittijiet tal-Bniedem; u (iii) imkien mill-artikoli ma johrog *animus injuriandi* rikjest mill-Ligi fil-konfront ta' l-attur personalment;

Semghet ix-xhieda ta' l-attur moghtija waqt is-seduti tat-3 ta' Lulju 2007[1] u tal-15 ta' Ottubru 2007[2] u rat id-dokumenti, ossia l-artikoli intitolati "Black shirts and blacker hearts" u "Martin and friends make the news" pubblikati fil-harga ta' The Malta Independent on Sunday tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006, esebiti minnu a fol. 19 sa' 22 tal-process, rat ix-xhieda moghtija minn Lawrence Attard Bezzina quddiem din il-Qorti diversament presjeduta fil-kawza fl-ismijiet "Martin Degiorgio v. Saviour Balzan" Avviz Nru. 199/06 esebita mill-attur permezz ta' Nota pprezentata fil-15 ta' Ottubru 2007 a fol. 29 sa' 31 tal-process, semghet ix-xhieda moghtija mill-konvenuta waqt is-seduti ta' l-4 ta' Frar 2008[3], tad-9 ta' Mejju 2008[4] u tal-15 ta' Dicembru 2009[5] u rat id-dokumenti esebiti minnha markati Dok. "CGD" a fol. 39 sa' 41 tal-process, Dok. "CGD2" sa' Dok. "CGD9" permezz ta' Nota pprezentata fil-11 ta' Marzu 2008 a fol. 43 sa' 62 tal-process u d-dokumenti esebiti permezz ta' Nota pprezentata fis-17 ta' Frar 2011 a fol. 102 sa' 173 tal-process u rat in-Nota tal-konvenuta ipprezentata fl-1 ta' Frar 2012 a fol. 177 sa' 180 tal-process;

Rat in-Nota ta' Sottomissjonijiet ta' l-attur a fol. 186 sa' 198 tal-process u rat in-Nota Responsiva tal-konvenuta a fol. 199 sa' 204 tal-process;

Rat l-atti kollha tal-kawza;

Ikkunsidrat:

Bil-proceduri odjerni l-attur jitlob li prevja dikjarazzjoni li bhala l-awtrici ta' l-artikoli intestati "Black shirts and blacker hearts" u "Martin and friends make the news" ippubblikati fil-gazzetta "The Malta Independent on Sunday" fl-edizzjoni tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006 rispettivament, il-konvenuta hija responsabbli ta' malafama u libel fil-konfront tieghu stante li siltiet mill-imsemmija pubblikazzjonijiet kienu malafamanti u libelluzi peress illi l-iskop taghhom kien li jtellef jew inaqqas ir-reputazzjoni tieghu, il-Qorti tikkundanna lill-konvenuta thallsu dik is-somma li tigi Minnha likwidata ai termini ta' l-Artikolu 28 tal-Kap. 248 tal-Ligijiet ta' Malta, liema somma ma teccedix Lm5,000, illum ekwivalenti ghal €11,646.87.

Il-konvenuta tilqa' ghat-talba attrici bl-eccezzjonijiet illi: (i) l-artikoli in kwistjoni ma humiex libelluzi fil-konfront ta' l-attur; (ii) fl-artikoli imsemmija hemm biss fatti li jigu pruvati u kummenti li jikkonsistu f'*fair comment* dwar kwistjonijiet ta' interess pubbliku u kritika accettabbli f'socjetà demokratika, kemm taht il-Ligijiet ta' l-Istampa kif ukoll taht il-Konvenzjoni Ewropeja dwar il-Libertajiet Fondamentali u d-Drittijiet tal-Bniedem; u (iii) imkien mill-

[1] Fol. 23 sa' 25 tal-process.
[2] Fol. 27 u 28 tal-process.
[3] Fol. 35 sa' 38 tal-process.
[4] Fol. 65 u 66 tal-process.
[5] Fol. 87 sa' 90 tal-process.

artikoli ma johrog *animus injuriandi* rikjest mill-Ligi fil-konfront ta' l-attur personalment.

Tul ix-xhieda li ta quddiem il-Qorti waqt is-seduta tat-3 ta' Lulju 2007[6], l-attur esebixxa l-artikoli meritu ta' dawn il-proceduri[7] w indika liema siltiet partikolari mill-imsemmija artikoli huma fil-fehma tieghu malafamanti u libelluzi fil-konfront tieghu.

Mill-artikolu intestat "Black shirts and blacker hearts" l-attur indika s-segwenti siltiet bhala li huma malafamanti u libelluzi fil-konfront tieghu; *Nobody would suggest that Norman Lowell and his black-shirts – or for that matter Philip Beattie, Martin De Giorgio and their Assocjazzjoni Nazzjonali Reppublikana – are about to seize power, forcing us to live under fascism. Our electoral system militates against small political movements, as Alternattiva Demokratika very well knows. Even if the system changes and the fascists succeed in obtaining seats in Parliament, they will never make it to government or even to opposition. But that is an irrelevant argument because fascists are not interested in democracy. … The danger is that they are fanning a frenzy of fear and hatred in the present: fear and hatred of the 'outsider' and, by extension, fear and hatred of other Maltese who point out that they are wrong-headed and that their views imperil our democratic way of life and our upholding of human rights and individual liberties. Of course, neither Lowell's Imperium Europa nor Beattie's and De Giorgio's ANR call themselves fascist. They say instead that they are "far right" conscious of the negative sentiments that the word fascism triggers in those with common sense and respect for the rights and dignity of others. But the reality of what we are does not emerge from our own perception of ourselves, nor through how we define our beliefs, but based on the facts of what we say and do, and how we think. On this basis, Imperium Europa and the ANR are fascist organizations. … Beattie and De Giorgio will be dismayed at being compared with Lowell. They like to think of themselves as the acceptable face of fascism – on in their words, the "far right" – while Lowell hovers on the crackpot fringe. They attempt to disassociate themselves from him without condemning his views or mentioning his name. … Karmenu Mifsud Bonnici did not shoot Raymond Caruana dead or ransack the halls of justice and the seat of the archbishop, but he failed to control the violence of the mob. These are things we lived through – bombs, deaths, shootings, ransacking, threats, fear – so why are we now behaving as though it is out of the question for rabid followers of an extremist organization to set fire to the property of those who criticize them? We, more than others, should know that it is not just entirely possible, but that it is almost certainly the correct explanation of what has been happening. After all we have lived through this kind of thing already.*

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[6] Fol. 23 sa' 25 tal-process.
[7] Fol. 19 sa' 22 tal-process.

Mill-artikolu intitolat "Martin and friends make the news" l-attur indika s-segwenti siltiet bhala li huma malafamanti u libelluzi fil-konfront tieghu; *Mr. Degiorgio recently said how important the ANR is, because all sorts of foreign journalists are interviewing him. He doesn't seem to realize that it is the importance of a freak show. This is how he was reported in the IHT: "We are a close-knit society and the migrants are, destroying our culture, Degiorgio said from his car, with DVX – the Latin letters for 'Duce', the title of the Italian fascist dictator Benito Mussolini – written on his licence-plate, Degiorgio said he would warn that the Africans risked turning Malta into the toilet of the Mediterranean. 'Islam took Malta by force, and now the Africans are invading us silently*[8]*,' he said". Mr. Degiorgio may sell a lot of trips to other countries, but I don't think he's doing much to sell trips to Malta. … Joanne Micallef, prolific writer of letters to the newspapers on the issue of illegal immigration, has revealed herself on Xarabank as a member of the ANR. No wonder she was so keen to pounce on me publicly for saying that it was the fascists who tried to burn my house down (with us inside it) and no wonder she leapt so quickly to the defence of Arlette Baldacchino – whom Norman Lowell calls his "Etoile" – when I wrote about her recently. Indeed, when I think about it, every letter written in support of Arlette, and published in this newspaper a couple of weeks ago, came from supporters and activists of the ANR and of Lowell's Imperium Europa. Gosh, what a surprise. I just wish they would declare their interest, instead of pretending to be genuinely disinterested readers. Arlette repaid the compliment by turning up to bolster the meager numbers at the ANR "rally of thousands", joined to Norman Lowell's hip, of course. He repaid a compliment of his own, by telling the Xarabank cameras that when he and "Etoile" call a rally, it will be enormous*[9]*.*

Fix-xhieda li ta waqt is-seduta tat-3 ta' Lulju 2007 l-attur spjega ghaliex dawn is-siltiet huma, fil-fehma tieghu, malafamanti u libelluzi fil-konfront tieghu: *min jaqra dawn l-artikoli jifhem li jiena persuna politikament estrem, li jiena faxxist, li jiena extreme right u jista' jkun li jien ghandi*[10] *implikazzjonijiet fuq il-hruq ta' karozzi u proprjetà ta' terzi persuni fosthom gurnalisti u gizwiti*[11]*. … Jiena nahdem bhala agent ta' l-ivjaggar u nokkupa l-kariga ta' direttur manigerjali. Nixtieq nghid li jiena l-main spokesman ta' ANR. Qed nigi attakkat f'dan il-kuntest. Nixtieq nghid li jiena personalment kif ukoll l-ANR dejjem ghamiltha cara li l-pozizzjoni taghha huwa ta' moviment konservattiv ghal-lemin moderat. Il-konnotazzjoni ta' lemin estrem u faxxizmu huma estremament negattivi. Nixtieq nghid li jien ghamiltha kemm pubblikament anke permezz tat-television li jiena ma nittollerax diskors ta' mibeghda razzjali kif effettivament jaghmel Norman Lowell. Nghid li m'ghandi xejn in*

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[8] Is-silta indikata mill-attur bhala li hija malafamanti u libelluza fil-konfront tieghu.
[9] Is-silta indikata mill-attur bhala li hija malafamanti u libelluza fil-konfront tieghu.
[10] Xhieda ccarata fix-xhieda sussegwenti moghtija mill-attur waqt is-seduta tal-15 ta' Ottubru 2007, fol. 27 tal-process.
[11] Xhieda ccarata fix-xhieda sussegwenti moghtija mill-attur waqt is-seduta tal-15 ta' Ottubru 2007, fol. 27 tal-process.

komuni ma' Norman Lowell ghalkemm dan l-artikolu qed jipprova jimplika dan. Nikkonferma li ahna m'ahniex organizzazzjoni faxxista. Dan huwa konfermat kemm minn dak li ntqal kif ukoll f'dak li nikteb minni ghan-nom ta' l-ANR. Nixtieq nghid li jiena dejjem ghamiltha cara li ahna nemmnu fis-seklu 2007 u nemmen fi process politiku demokratiku. It-twemmin tieghi huwa vicin hafna ta' l-Alleanza Nazzjonali ta' l-Italja li b'partiti konservattivi ... Jiena bniedem ukoll nazzjonalist li nemmen ... fl-imhabba tan-nazzjon. Effettivament ma nissimpatizzax ma' nies li llum il-gurnata ... politici li kienu jezistu sittin, sebghin, tmenin sena ilu. ... l-artikolu in kwistjoni inkiteb fi zminijiet meta kien hemm hafna hruq ghaddej fil-pajjiz. Il-karozza tal-gizwiti, id-djar ta' gurnalisti fosthom dik ta' l-artikolista Daphne Caruana Galizia. L-artikolu in kwistjoni qed jaghmel parallel bejn Karmenu Mifsud Bonnici ... bhali Martin Degiorgio li qed jigi implikat li mhux necessarjament mort jiena nahraq il-proprjetajiet però bid-diskors tieghi wisq probabli li ... dawn l-atti kriminali. Qed naghmel refereza ghat-tieni artikolu tat-18 ta' Gunju 2006. Qed naghmel referenza partikolarment ghat-tielet kolonna fejn l-artikolista Daphne Caruana Galizia qalet li jiena allegatament ghidt li l-Afrikani se jaghmlu Malta latrina[12]. Jiena dan id-diskors qatt m'ghidtu. Nikkonferma wkoll li l-ebda ufficjal ta' l-ANR ma qal diskors simili u cioè li l-Afrikani kienu se jaghmlu toilet minn Malta. Fir-raba' colonna l-artikolista taghmel din ir-rabta bejn Martin Degiorgio u Norman Lowell u din granet qabel waqt udjenza li kelli fuq Xarabank u kien hemm mija u erbghin elf spettatur u sar diskors proprju li kieku kien ghaliha Norman Lowell imur il-habs minhabba certu diskors li jincita mibeghda razzjali kontra Afrikani u kontra l-Lhud[13]. Tinghata dehra li jiena kwazi kriminali jew li jiena estremist ghall-ahhar anzi faxxist... Ma xtaqtx li jkolli din ir-reputazzjoni. Kif ukoll din ir-rabta li hemm bejni u bejn dan Norman Lowell f'dawn l-artikoli ma tisthoqqlix ghax jiena m'ghandi l-ebda rabta mieghu. ... Norman Lowell ma ghandux isem tajjeb ... li jiena hajjart jew iccitajt jew incitajt jew ikkontribwejt ghall-atti ta' hruq li kien hemm. ... Nixtieq nghid li f'dak iz-zmien stess kont hrigt stqarrija u kont ikkundannajt dawk l-attakki barbarici. Imbaghad kont jien li sejjahtilhom atti terroistici. Din kienet giet ippubblikata fuq diversi gazzetti fosthom it-Times.

Kif già iktar 'l fuq osservat il-konvenuta tikkontendi li l-artikoli in kwistjoni ma humiex libelluzi fil-konfront ta' l-attur, li fl-artikoli imsemmija hemm biss fatti li jigu pruvati u kummenti li jikkonsistu f'*fair comment* dwar kwistjonijiet ta' interess pubbliku u kritika accettabbli f'socjetà demokratika, kemm taht il-Ligijiet ta' l-Istampa kif ukoll taht il-Konvenzjoni Ewropeja dwar il-Libertajiet Fondamentali u d-Drittijiet tal-Bniedem, u li imkien mill-artikoli ma johrog *animus injuriandi* rikjest mill-Ligi fil-konfront ta' l-attur personalment.

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[12] Xhieda ccarata fix-xhieda sussegwenti moghtija mill-attur waqt is-seduta tal-15 ta' Ottubru 2007, fol. 27 tal-process.
[13] Xhieda ccarata fix-xhieda sussegwenti moghtija mill-attur waqt is-seduta tal-15 ta' Ottubru 2007, fol. 27 tal-process.

In sostenn ta' l-eccezzjonijiet taghha l-konvenuta xehdet illi *qrajt ix-xhieda li ta s-Sur Martin Degiorgio u dak li qed ighid huwa bhala fatt li huwa m'huwiex faxxist. Nixtieq nghid però li minn diskors li jghid hu jidher li huwa faxxist ghax faxxist huwa bniedem li jemmen fit-twemmin estrem. Qed nesebixxi dokument li qed jigi mmarkat bhala dokument CGD li hemm definizzjoni ta' xi tfisser faxxismu. ... l-istess Martin Degiorgio attirali l-attenzjoni tieghi bi speeches u kitba tieghu. Mill-ewwel indunajt u ghidt possibbli hemm nies li ghadhom jahsbu hekk fit-twemmin? Nixtieq nghid li l-politika tieghu hija wahda purament faxxista. ... bniedem li assocja ruhu fl-ANR, certu Paul Salomone, li jiena ma nafux di persona, mill-kitba tieghu nghid ukoll li huwa bniedem faxxist. It-tielet wiehed li huwa Philip Beattie, li illum issieheb ma' l-AN ta' Anglu Xuereb, ili nafu madwar ghal dawn l-ahhar tletin sena u minn dejjem kien faxxist u faxxist estrem. Fil-fehma tieghi kulhadd jaf, m'huwiex sigriet. Qed naghmel referenza ghall-artiklu miktub minni "Blackshirts and blacker hearts" li deher fil-Malta Independent fil-harga tal-21 ta' Mejju 2006 esebit f'dawn l-atti u mmarkat bhala dokument CSH1. Nixtieq nghid li dak iz-zmien li nkiteb dan l-artiklu kien hemm hafna mibeghda mizrugha. Kien hemm il-marches u l-ispeeches fit-toroq u dejjem fuq l-istess gist u cioè kontra n-nies li huma differenti mhux necessarjament ghas-suwed biss però n-nies li huma differenti mhux minn Malta. Nixtieq nghid li t-ton ta' l-ispeeches kien ton li jizra' l-mibeghda m'hemmx dubju. Nghid li dak iz-zmien kien hemm anke hruq fid-djar tan-nies fosthom id-dar tieghi wkoll. M'inhix nghid li Martin Degiorgio jew siehbi Philip Beattie gew jaghmlu hekk. Fil-fehma tieghi qisu ma rrealizzax li dak li qal u cioè dak id-diskors li kienu qed jattiraw certu grupp ta' nies huma dawk in-nies li huma kapaci jaghmlu dawn it-tip ta' affarijiet u cioè hruq. Ghalhekk b'dak li jghidu m'hemmx dubju li jattiraw certu nies vjolenti. ... in-nies li gew jaharqu dari, certament kienu numru ta' nies minhabba n-numru ta' tyres li nstabu kienu nies ta' certu motiv. B'hekk nixtieq nghid li jiena fl-artiklu tieghi kont ghamilt paragun bejn dak li kien gara fi zmien it-tmeninijiet u cioè l-vandalizmu tal-Kurja u meta kissru l-Qorti. Effettivament ma kienx hemm il-politici li ghamlu dawn l-affarijiet. Tawhom in-nar ... biex jigu. B'hekk nixtieq nghid li l-istess gara fil-kaz tieghi. Jiena kontra dawn it-tip ta' speeches li huma estremi u mhux ghax kontra l-lemin estrem jew kontra s-suwed però huma speeches estremi cioè dawk l-ispeeches li jizraw il-mibeghda u jipprovokaw il-vjolenza. Dak huwa appuntu li ddisturbani. Nikkonferma wkoll li jiena kont li ktibt artiklu "Martin and friends made the news" li jinsab pubblikat fil-harga tat-18 ta' Gunju 2006 fil-gazzetta The Malta Independent u li kopja tieghu jinsab esebit fl-atti mmarkat bhala dokument CSH2. It-tieni artiklu inkiteb fi zmien xi xahar wara l-hruq li sar fid-dar tieghi, l-ahhar hruq illinkjat ma' din il-kwistjoni tas-suwed. Nghid li dak iz-zmien kien hemm hafna kjass fil-pajjiz dwar din il-kwistjoni. Ma nahsibx li huwa possibbli li Martin Degiorgio jahseb li jiena nikteb artiklu fuq min hu kontra s-suwed u nies li m'humiex bhalna u ma nsemmix lilu. Nahseb li Martin Degiorgio jiddispjacih li jiena poggejtu fl-istess keffa ma' Norman Lowell minn dak li qrajt. Veru jista' jkun il-kaz li Norman Lowell ma huwiex bniedem normali waqt li Martin Degiorgio jidher li hu. L-isfortuna hi li Martin Degiorgio*

hareg bil-filosofija tieghu fl-istess zmien ta' Norman Lowell u ghalhekk fil-fatt nghid li gabru l-istess nies u meta s-Sur Degiorgio ghamel meeting il-Belt Norman Lowell kien fuq quddiem bhala supporter tieghu. Ghalhekk nixtieq nghid li ghalhekk in-nies ma setghux jaghmlu distinzjoni bejn Martin Degiorgio ta' l-ANR u Norman Lowell ta' Viva Malta jew Emporium. Ghalhekk nixtieq nghid li t-tnejn jippridkaw l-istess messagg u cioè hdura kontra s-suwed. … fuq il-website ta' l-ANR kien hemm hafna links ma assocazzjonijiet u partiti politici tal-lemin estrem u nghid li ma nahsibx fil-fehma tieghi li kienu jaghmlu l-links jekk ma kienux jaqblu maghhom. Fil-fehma tieghi kienu jaghmlu l-links ma' partiti politici liberali. Mistoqsija nghid x'wassalni ghall-konkluzjoni li l-ANR u l-assocjazzjoni ta' Norman Lowell ghandhom l-istess supporters nghid li effettivament jiena narahom. Nixtieq nghid haga interessanti huwa fil-blog ta' Viva Malta hemm link li hemm chat site ta' Imperium Europa fejn din … Baldacchino, li hija supporter ta' Norman Lowell, hadet ghaliha hafna ghaliex kienet mistiedna event u meta waslet sabet li dan kien celebrazzjoni ta' Hitler, il-birthday tieghu u hi hadet ghaliha li sabet ruhha hemmhekk. Hi semmiet li kien hemm Martin Degiorgio. Però jista' jkun li Martin Degiorgio jinnegah però ma jidhirx li huwa nneggaha jew ghamel xi libel kontra … Baldacchino…[14]. Apparte minn hekk esebiet numru ta' dokumenti, konsistenti principalment fi *print outs* minn *diversi websites*[15], li skontha lkoll jikkoroboraw il-kummenti taghha dwar l-attur kif minnha esposti fiz-zewg artikoli mertu ta' dawn il-proceduri[16].

Il-Qorti kkunsidrat il-provi kollha prodotti u l-posizzjonijiet rispettivi tal-partijiet kontendenti u tqis li l-artikoli li l-konvenuta kitbet dwar u b'referenza ghall-attur huma bhala fatt malafamanti u libelluzi fil-konfront tieghu u bl-ebda mod jista' jitqies li hija kienet qed taghmel *fair comment* dwar kwistjonijiet ta' interess pubbliku u kritika accettabbli f'socjetà demokratika.

Fl-artikoli in kwistjoni l-konvenuta bla tlaqliq ta' xejn tghid li l-attur huwa faxxist u fix-xhieda li tat quddiem il-Qorti waqt is-seduta ta' l-4 ta' Frar 2008 ittenni li fil-fehma taghha l-politika ta' l-attur hija *wahda purament faxxista*[17]. Biex issosstni l-posizzjoni taghha l-konvenuta esebiet definizzjoni ta' faxxizmu u cioè *a political system based on a very powerful leader, state control and extreme pride in country and race, and in which political opposition is not allowed*[18] u *a political philosophy, movement or regime (as that of the Fascisti) that exalts nation and often race above the individual and that stands for a centralized autocratic government headed by a dictatorial leader, severe economic and social regimentation, and forcible suppression*

[14] Xhieda moghtija waqt is-seduta ta' l-4 ta' Frar 2008, fol. 35 sa' 38 tal-process.
[15] Dok. "CGD" a fol. 39 sa' 41 tal-process, Dok. "CGD2" sa' Dok. "CGD9" a fol. 45 sa' 62 tal-process u dokumenti a fol. 103 sa' 173 tal-process.
[16] Xhieda moghtija waqt is-seduta tad-9 ta' Mejju 2008 a fol. 65 u 66 tal-process u Nota tal-konvenuta ipprezentata fl-1 ta' Frar 2012 a fol. 177 u 178 tal-process.
[17] Fol. 36 tal-process.
[18] Dok. "CGD" a fol. 39 tal-process.

of opposition[19] u tikkontendi li l-politika jew ahjar l-ideologija ta' l-attur fir-rigward ta' l-immigrazzjoni taqa' entro tali parametri tal-politika jew ahjar ta' l-ideologija faxxista. In effetti in kontro-ezami waqt is-seduta tal-15 ta' Dicembru 2009 il-konvenuta ddikjarat ulterjorment illi *mistoqsija nispjega ghaliex qed nghid illi fil-fatt l-attur Martin Degiorgio jemmen fit-twemmin estrem u li fil-fatt kien hemm diversi diskorsi nghid illi Martin Degiorgio jifforma parti mill-group maghruf bhala ANR u llum il-gurnata ma ghandux parti minnu jew jekk fil-fatt l-ANR ghadux jezisti jew le jiena però ma nafx u l-ANR kien partit politiku ta' l-extreme lemin. L-ANR kien jesebixxi twemmin fondamentali tal-politika tal-lemin estrem. ... Li tirrikonoxxi li hemm problema minhabba l-immigrazzjoni hija haga però li bniedem jesprimi l-opinjoni tieghu proprju kontra n-nies gejjin mill-pajjizi ta' l-Afrika hija kwistjoni ohra. L-opinjoni tieghi ma naqbadx u niffurmaha minn ... izda fuq dak li naqra. Il-fatt li Philip Beattie huwa bniedem faxxist u ssieheb ma' l-ANR ifisser li huma ghandhom interessi komuni cioè dawk ta' faxxizmu.*

Fil-fehma tal-Qorti l-uzu da parte tal-konvenuta ta' l-appellativ faxxist fir-rigward ta' l-attur ma kienx intiz bhala deskrizzjoni ta' l-ideologiji tieghu kif minnha issa affermat, izda kellu l-iskop uniku ta' attribuzzjoni negattiva fil-konfront ta' l-attur fil-firxa socio-politico kollha taghha.

Fl-analizi sottomessa mill-konvenuta ghall-konsiderazzjoni ta' din il-Qorti dwar x'inhi l-ideologija faxxista, l-istess konvenuta ghad illi tat definizzjoni ta' x'inhu faxxizmu u ta' x'inhu faxxist, naqset milli ssemmi jew tittratta dwar il-konnotazzjonijiet negattivi u n-natura pegorattiva li t-termini faxxismu u faxxist ghandhom fis-socjetà odjerna. In oltre hija bbazat l-analizi u konsegwenti asserzjonijiet taghha fuq il-fatt li fuq il-*website* ta' l-Alleanza Nazzjonali Repubblikana kien hemm *links* ghall-partit Taljan Alleanza Nazionale u ghall-blog A Voice from the Right ta' certu Lawrence Auster u minhabba osservazzjoni maghmula minn Arlette Baldacchino, membru tal-partit Imperium Europa fuq il-*forum* tal-*website* ta' Viva Malta, minghajr però ma ndagat ulterjorment fuq dawn l-elementi u konnessjonijiet.

Illum il-gurnata, partikolarment fiz-zminijiet ta' wara t-Tieni Gwerra Dinjija u il-grajjiet horox li sehhew matulha, huwa rikonoxxut li t-termini faxxismu u faxxist ghandhom konnotazzjonijiet ferm negattivi u huma termini pegorattivi intizi l-iktar bhala insult. Jigi osservat illi *as a political epithet, fascist has been used in an anti-authoritarian sense to emphasize the common ideology of governmental suppression of individual freedom. In this sense, the word fascist is intended to mean oppressive, intolerant, chauvinist, genocidal, dictatorial, racist, or aggressive. George Orwell wrote in 1944: ...the word 'Fascism' is almost entirely meaningless. In conversation, of course, it is used even more wildly than in print. I have heard it applied to farmers, shopkeepers, Social Credit, corporal punishment, fox-hunting, bull-fighting,*

[19] Fol. 40 tal-process.

the 1922 Committee, the 1941 Committee, Kipling, Gandhi, Chiang Kai-Shek, homosexuality, Priestley's broadcasts, Youth Hostels, astrology, women, dogs and I do not know what else ... Except for the relatively small number of Fascist sympathisers, almost any English person would accept 'bully' as a synonym for 'Fascist'. That is about as near to a definition as this much-abused word has come[20].

Il-Qorti hija tal-fehma li fil-kaz in ezami l-intenzjoni tal-konvenuta, li kjarament hija opposta ghall-ideologija appertament kontra l-immigrazzjoni ta' l-attur, wara l-attribuzzjoni fil-konfront tieghu tat-terminu faxxist fl-artikoli mertu tal-kontestazzjoni kienet wahda purament ta' insult u xejn iktar. Dana johrog car ukoll mill-mod sommarju li kkonkludiet li l-attur huwa faxxist minhabba *links* li kienu jidhru fuq il-*website* ta' l-Alleanza Nazzjonali Repubblikana ghall-partit politiku Taljan Alleanza Nazionale u ghall-blog A Voice from the Right immexxi minn Lawrence Auster.

Ghad illi tohloq konnotazzjoni negattiva a bazi tal-*link* fuq il-*website* ta' l-Alleanza Nazzjonali Repubblikana ghall-partit politiku Taljan Alleanza Nazionale, il-konvenuta evidentement naqset milli tikkonsidra bil-mod opportun l-ideologija ta' tali partit ghaliex altrimenti kienet issir taf li l-Alleanza Nazionale ma kenitx tabbraccja l-ideologija faxxista, anzi tant iddisassocjat ruhha minnha li certa membri tal-partit – fosthom Alessandra Mussolini neputija ta' Benito Mussolini – kienu telqu w a loro volta iddisassocjaw ruhhom mill-partit in kwistjoni.

In effetti minn rickera li il-Qorti ghamlet dwar dan il-partit politika, ricerka li facilment setghet anzi messa saret mill-konvenuta wkoll, irrizulta li: *National Alliance, launched in 1994, was officially founded in January 1995, when the Italian Social Movement (MSI), the former neo-fascist party, merged with conservative elements of the former Christian Democracy, which had disbanded in 1994 after two years of scandals and various splits due to corruption at its highest levels, exposed by the Mani pulite investigation, and the Italian Liberal Party, disbanded in the same year. Former MSI members were however still the bulk of the new party and former MSI leader Gianfranco Fini was elected leader of the new party. The AN logo followed a template very similar to that of the Democratic Party of the Left, with the logo of the direct predecessor party in a small circle, as a means of legally preventing others from using it. The name was suggested by an article on the Italian newspaper Il Tempo written in 1992 by Domenico Fisichella, a prominent conservative academic. Starting in the 1990s, the MSI gradually transformed into a mainstream right-wing party, culminating in its 1995 dissolution into AN. The party was part of all three House of Freedoms coalition governments led by Silvio Berlusconi. Gianfranco Fini was notably nominated Deputy Prime Minister after the 2001 general*

[20] en.wikipedia.org/wiki/Definitions_of_fascism.

election and was Foreign Minister from November 2004 to May 2006. When Gianfranco Fini visited Israel in late November 2003 in the function of Italian Deputy Prime Minister, he labeled the racial laws issued by the fascist regime in 1938 as "infamous", as also Giorgio Almirante, historic leader of MSI, had done before. He also referred to the Italian Social Republic as belonging to the most shameful pages of the past, and considered fascism part of an era of "absolute evil", something which was hardly acceptable to the few remaining hardliners of the party. As a result, Alessandra Mussolini, the granddaughter of the former fascist dictator Benito Mussolini, who had been at odds with the party on a number of issues for a long time, and some hardliners left the party and formed Social Action [21]*. ... National Alliance's political program emphasized: traditional values, being often close to the position of the Roman Catholic Church, despite some social liberal and secular attitudes; the United States and European integration; prohibition of all drugs, including marjuana. Distinguishing itself from the MSI, the party distanced itself from Benito Mussolini and Fascism and made efforts to improve relations with Jewish groups. With most hardliners leaving the party, it sought to present itself as a respectable conservative party and to join forces with Forza Italia in the European People's Party and, eventually, in a united party of the centre-right*[22]*. Although the party approved the market economy and held favourable views on liberalizations and the privatization of state industries, however AN was to the left of Forza Italia on economic issues and sometimes supported statist policies. That is why the party was strong in Rome and Lazio, where most civil servants live. Moreover AN presented itself as a party promoting national cohesion, national identity and patriotism. Regarding institutional reforms, the party was a long-time supporter of presidentialism and a plurality voting system, and came to support also federalism and to fully accept the alliance with Lega Nord, although the relations with that party were tense at times, especially about issues regarding national unity. Gianfranco Fini, a moderniser who saw Nicolas Sarkozy and David Cameron as role-models, impressed an ambitious political line to the party, combining the pillars of conservative ideology like security, family values and patriotism with a progressive approach in other areas such as stem cell research and supporting voting rights for legal aliens. Some of these positions were not shared by many members of the party, most of whom staunchly opposed stem cell research and artificial insemination.*

Bl-istess mod u dejjem fil-kuntest ta’ l-affermazzjoni tal-konvenuta li l-attur huwa faxxist, ghalkemm tohloq nozzjoni negattiva fil-konfront ta’ l-attur minhabba l-fatt li fil-*website* ta’ l-Allejanza Nazzjonali Repubblikana kien hemm *links* ghall-blog *A Voice from the Right* dak iz-zmien imexxi minn Lawrence Auster, il-konvenuta naqset milli tindaga sew dwar min kien

[21] Sottolinear tal-Qorti.
[22] Sottolinear tal-Qorti.

Lawrence Auster u x'kienet l-ideologija tieghu. Minn ricerka li ghamlet il-Qorti, mill-gdid jigi ribadit rickera li facilment setghet anzi messa ghamlet il-konvenuta wkoll, jirrizulta li dan Lawrence Auster kien *an American traditionalist conservative blogger and essayist. He was best known within traditionalist conservative circles for his writings on immigration and multiculturalism ... Auster was a strong conservative who primarily identified as a "traditionalist" who opposed the liberalism of modern western society. His interests were primarily social policy, particularly the politics of gender, sex, religion, sexuality, culture, patriotism, and identity. He was also a frequent commentator on day-to-day American politics. Auster was not shy about describing himself profoundly alienated from modern America, and he considered most institutions of American society, including both political parties, to be corrupted by liberal philosophy. Auster wrote, "I have always called myself a racialist, which to me means two things. First, as a general proposition, I think that race matters in all kinds of ways. Second, I care about the white race. It is the source of and is inseparable from everything we are, everything we have, and everything our civilization has achieved." However, he chose not to self-identify as a white nationalist, and, as a tactical matter, accepted the conventional definition of racism as having "the connotation of the morally bad, of oppression and hatred."*[23]

Minn ricerka ulterjuri li l-Qorti ghamlet dwar *tradionalist conservatism* jirrizulta li *Traditionalist Conservatism, also known as Traditional Conservatism, Traditionalism, Classical Conservatism and (in the United Kingdom and Canada) Toryism, is a political philosophy emphasizing the need for the principles of natural law and transcendent moral order, tradition, hierarchy and organic unity, agrarianism, classicism and high culture, and the intersecting spheres of loyalty. Some traditionalists have embraced the labels "reactionary" and "counterrevolutionary", defying the stigma that has attached to these terms since the Enlightenment. Traditionalism developed in 18th-century Europe (particularly in response to the English Civil War and the French Revolution). In the middle of the 20th century it started to organize itself in earnest as an intellectual and political force. This more modern expression of traditionalist conservatism began among a group of U.S. university professors (labeled the "New Conservatives" by the popular press) who rejected the notions of individualism, liberalism,egalitarianism, modernity, and social progress, promoted cultural and educational renewal, and revived interest in the Church, the family, the state, local community, etc.*[24]

Ghalkemm il-partit politiku Taljan Alleanza Nazionale u Lawrence Auster kienu ihaddnu ideat nettament kontra l-immigrazzjoni w indubbjament l-attur jaqbel ma' tali ideat, fatt dan li huwa qatt ma pprova jahbi ghaliex apertament

[23] en.wikipedia.org/wiki/Lawrence_Auster.
[24] en.wikipedia.org/wiki/Traditionalist_conservatism.

iddikjara il-posizzjoni tieghu fir-rigward ta' l-immigrazzjoni u flimkien ma' ohrajn holoq il-grupp Alleanza Nazzjonali Repubblikana proprio bhala *anti-immigration pressure group*, b'daqshekk ma jfissirx li l-Alleanza Nazionale u Lawrence Auster u per konsegwenza l-attur huma faxxisti bl-implikazzjoni kif intiza mill-konvenuta.

In effetti diversi studjuzi dwar il-faxxizmu, bhal ad ezempju Roger Griffin, iddeterminaw l-elementi kostituttivi ta' l-ideologija faxxista u jargumentaw illi *fascism is best understood as a series of propositions or 'myths'. For this reason, he* [Roger Griffin] *follows Payne in listing those characteristics which could be said to make up the fascist minimum. To Griffin, fascism is anti-liberal, anti-conservative, charismatic, anti-rational, socialist, totalitarian, racist and eclectic. He suggests that fascism emerges when a nation perceives itself to be in crisis; he also maintains – like Payne – that it has no common class basis of support. Griffin, however, goes beyond Stanley Payne, arguing that there is one single thread which links this 'common mythic core', which is nationalism. Fascism, Roger Griffin believes, is best understood as a form of nationalism, as 'a genus of political ideology whose mythic core in its various permutations is a palingenetic form of populist ultra-nationalism'. This phrase, 'palingenetic ultra-nationalism' is Griffin's recurring definition. The word 'palingenetic' means rebirth, so fascism is a form of nationalism that describes 'its' nation as decadent and in need of rebirth through a nationalist revolution. Fascism then is ultra- or revolutionary-nationalism. The interpretation offered by these historians clearly diverge. Griffin argues that fascism and Nazim are different from one another, though at the same time linked, through a common mythic core. Sternhell, however, simply maintains that Hitler was no fascist. Despite these differences there are far more significant areas over which the historians agree. For example, Eatwell, Griffin, Sternhell and Payne all adhere to the method, derived from Max Weber, of an 'ideal type'. They generate an 'ideal fascist' by presenting a list of carefully selected ideas of fascism out of which they then construct a 'fascist minimum'. If a group or individual adheres to the greater number of these fascist ideas, then the adherent themselves is fascist. This method enables historians to distinguish fascism from other conservative nationalisms, such as Christian fundamentalism or more traditional Conservatism*[25].

Fattur iehor li kjarament juri l-iskop reali tal-konvenuta wara l-uzu ta' l-appellativ faxxist fil-konfront ta' l-attur huwa fejn tirrapporta dak li qalet Arlette Baldacchino fir-rigward ta' l-istess attur u cioè *fil-blog ta' Viva Malta hemm link li hemm chat site ta' Imperium Europa fejn din … Baldacchino, li hija supporter ta' Norman Lowell, hadet ghaliha hafna ghaliex kienet mistiedna event u meta waslet sabet li dan kien celebrazzjoni ta' Hitler, il-birthday tieghu u hi hadet ghaliha li sabet ruhha hemmhekk. Hi semmiet li*

[25] Fascism: The nature of fascism – Matthew Feldam, pg. 294 u 295. Sottolinear tal-Qorti.

kien hemm Martin Degiorgio. Però jista' jkun li Martin Degiorgio jinnegah però ma jidhirx li huwa nneggaha jew ghamel xi libel kontra … Baldacchino…[26], minghajr però ma ndagat ulterjorment dwar dak li realment gara.

Fl-ewwel lok minn dokument esebit mill-konvenuta stess a fol. 103 tal-process jirrizulta li kuntrarjament ghal dak minnha affermat fix-xhieda taghha, fit-13 ta' Ottubru 2006, ossia dakinhar stess li Arlette Baldacchino ghamlet id-dikjarazzjonijiet taghha fil-konfront ta' l-attur[27], l-istess attur istitwixxa proceduri ta' libel fil-konfront taghha. In effetti minn dan id-dokument li huwa estratt minn The Malta Indepdent Online intitolat *ANR frontman sues "Viva Malta" spokeswoman for libel* u datat 14 ta' Ottubru 2006, jirrizulta li *Alleanza Nazzjonali Repubblikana (ANR – National Republican Alliance) frontman Martin Degiorgio yesterday filed a libel suit over articles published on the Viva Malta website. The libel suit was filed against Viva Malta spokeswoman Arlette Baldacchino, the author of a number of articles that Mr. Degiorgio claimed were libelous and defamatory, and were aimed at tarnishing his reputation…* Fil-fehma tal-Qorti l-fatt li l-attur istitwixxa dawn il-proceduri ta' libel fil-konfront ta' Arlette Baldacchino jxejjen dak li tipprova timplika l-konvenuta fix-xhieda taghha, u cioè li fin-nuqqas ta' proceduri ta' libel l-attur gie li implicitament ammetta li kien jinsab f'dan l-avveniment imsemmi minn Baldacchino.

Il-konvenuta tikkontendi wkoll li l-*posting* li deher fuq il-*forum* tal-*webiste* ta' Viva Malta taht l-isem Baron Ironblood – esebit a fol. 62 tal-process – kien *posting* ta' l-attur peress huwa kien jikteb taht dan l-isem Baron Ironblood. In effetti fix-xhieda li tat quddiem il-Qorti waqt is-seduta tad-9 ta' Mejju 2008[28], il-konvenuta ddikjarat li *l-ahhar riferenza huwa dokment CGD9 li huwa posting fuq internet forum minghand Martin Degorgio li huza n-nickname Baron Iron Blookd li wkoll jaghmel referenza ghal Adolf Hitler who is one of the most significant personalities of the 20th Century …… Third Reich tal-Germanja u kliem simili.* Hawn hekk kjarament il-konvenuta qed tipprova tallaccja lill-attur mal-kuncett tal-faxxismu, jekk mhux addirittura tan-nazzismu, izda ma ressqet l-ebda prova, li fl-ahhar mill-ahhar kellha l-obbligu li tressaq, li sodisfacentement tikkorobora l-affermazzjoni taghha li effettivament kien l-attur li ghamel il-*posting* in kwistjoni.

Filwaqt illi l-Qorti fermament temmen li l-konvenuta ghandha kull dritt li ma taqbilx ma' l-ideologiji u politika ta' l-attur fir-rigward tal-kwistjoni ta' l-immirgrazzjoni u konsegwentement ghandha kull dritt li tikkritikah f'tali rigward, tali kritika trid tkun wahda meqjusa u proporzjonata u mhux ingurjiza u malafamanti.

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[26] Xhieda moghtija waqt is-seduta ta' l-4 ta' Frar 2008, fol. 35 sa' 38 tal-process.
[27] Dok. "CGD1" a fol. 41 tal-process.
[28] Fol. 65 u 66 tal-process.

F'dan ir-rigward issir referenza ghas-sentenza fl-ismijiet **Onor. George Vella v. Noel Grima, Citaz. Nru. 1945/98** deciza mill-Prim' Awla tal-Qorti Civili fit-28 ta' Marzu 2003, fejn il-Qorti osservat illi: *l-attur accetta li ghandu jkun hemm kritika hielsa u skrutinju mill-istampa izda qal li hemm il-limitu u ma jistax jaccetta min jattribwilu motivi ulterjuri u min appellativi bhal iron grip, reign of terror u Stalinist. Skond il-gurisprudenza tal-Qrati taghna, "Il-libertà ta' l-istampa ghandha dejjem tigi salvagwardata billi hija wiehed mill-ingredjenti fundamentali ta' kull socjetà demokratika… izda b'daqshekk l-istampa ma nghatax ebda passaport ta' immunità, billi tibqa' dejjem il-htiega li jinzamm sens ta' proporzjon bejn il-libertà ta' l-espressjoni u c-censura tal-malafama" (Ara Vol LXXV111 p 2 p 383). Illi l-kliem uzat fl-artikolu fil-konfront ta' l-attur bhal iron grip, reign of terror u stalinist huma malafamanti. Dan mhux kaz ta' semplici kumment politiku izda attribuzzjoni ta' motivi u ghanijiet ulterjuri b'appellativi dispreggjattivi. Intqal fid-decizjoni 'Il-Pulizija vs Rocco Abdilla et' App Kriminali 28 ta' April, 1962 "Appena hemm bzonn jigi rilevat li l-paragun ma' "any odious, disreputable or contemptible person" hu libelluz, ara Gately pag 30: It is libelous to compare a person's character with that of any odious, disreputable or contemptible persons… (Bennet vs Australian Newspaper Co.) (Ara App Dr. A. Sant vs J. Mikallef 10/1/2003). "It has been held defamatory to write of someone that he has been guilty of oppressive, intolerant conduct…" Gatley page 42 9th Edition.) Ghalhekk li tqabbel agir ta' persuna bhala stalinist u li dan ser igib reign of terror jimplika li ser ikun hemm qtugh ta' irjus u qtil bil-miljuni ta' nies, li l-Qorti ma timmaginax li kien dak li kellhu f'mohhu l-persuna ndikata mill-konvenut fl-artikolu tieghu.*

Issir referenza wkoll ghas-sentenza fl-ismijiet **Dr. Alfred Sant v. Joe Mikallef, Appell Civili Nru. 664/01** deciza mill-Qorti ta' l-Appell (Sede Inferjuri) fl-10 ta' Jannar 2003, liema kaz kien jittratta dwar *karikatura pubblikata ma' genb l-editorjal* [tal-gazzetta "In-Nazzjon" ta' l-20 ta' Gunju 2001] *li turi lill-attur fuq tapit jew podium bl-iswastika jindirizza xi meeting u jitmashan bil-kliem Jien Biss Immexxi. Jien Biss. Il-karikatura taghmel enfasi ghall-personagg illi qieghdha tirrapprezenta bil-mustacci illi jidhru taht l-imnieher fejn gie allegat li dana sar apposta sabiex il-karikatura tidentifika lill-attur ma' Adolf Hitler, il-Mexxej tar-Regim Nazist.*

Fl-imsemmija sentenza l-Qorti ta' l-Appell (Sede Inferjuri) osservat illi: *dak li verament jimporta hu li l-qarrej jifhem li l-attribuzzjoni maghmula fl-istampat tolqot lill-attur. ("Thomas Hedley -vs- Dr. Anton Buttigieg", Appell Kriminali, 23 ta' Mejju 1962). It-tifsira ma tistax tkun dik innokwa skond il-fehma tal-konvenut u fl-istess waqt, dik diffamatorja skond l-opinjoni tal-attur. It-test ghandu jkun wiehed oggettiv kif mifhum mill-qarrej ordinarju. Kif jghallem il-Gatley (op. cit. Pagna 44) "what imputation is conveyed by any particular words is to be determined on an objective test, that is, by the meaning in which the ordinary reasonable man would understand them. The test according to the authorities is whether, under the circumstances in*

which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libellous sense. The imputation conveyed is not to be determined by the meaning intended by the man who published the words, nor is it necessarily determined by the meaning which those to whom the words were published in fact attached to them." Konsiderata minn din l-ottika ma jidhirx li l-konsiderazzjonijiet ta' apprezzament ta' fatt u ta' dritt li ghamlet l-ewwel Qorti jista' jitqies censurabbli. Intqal fid-decizjoni "Il-Pulizija -vs- Rocco Abdilla et", Appell Kriminali, 28 ta' April 1962:- "Appena hemm bzonn jigi rilevat li l-paragun ta' persuna ma' "any odious, disreputable or contemptible person" hu libelluz. Hekk il-kazistika gudizzjarja toffri l-ezempji ta' paraguni libelluzi ma' Guda, Shylock etc (Gatley p32; Folkard " The Law of Slander and Libel" p 165). F'kazijiet simili ma hemmx bzonn li jigi ppruvat ebda "innuendo"." Apparti l-bosta ezempji ohra li nsibu fil-Gatley (op. cit. para 50), fil-gurisprudenza taghna niltaqghu fost ohrajn ma' dawn l-ezemplari:- "giddieb" (Sir Gerald Strickland -vs- Goffredo Chretien", Appell Civili, 10 ta' Jannar 1027) "mazun" ("Sir Gerald Strickland -vs- Spiridione Mallia", Appell Kriminali, 4 ta' Frar 1928), "komunist" ("Il-Pulizija -vs- Joseph Olivier Munroe", Appell Kriminali, 7 ta' Marzu 1949; "Perit Duminku Mintoff et -vs- Dottor. Carmelo Schembri noe", Appell Kriminali, 7 ta' Frar 1953; "Dominic Mintoff -vs- Thomas Hedley et nomine", Appell Kriminali, 28 ta' Novembru 1953). Huwa minnu li persuna li tokkupa kariga politika hi esposta ghal kritika ("Sir Gerad Strickland -vs- Enrico Mizzi", Appell Civili, 25 ta' April 1938). Kitba anke harxa u skomda. Dejjem pero' fil-parametri accettati tad-dicenza permissibbli f'socjeta' demokratika ("Onor Lorry Sant -vs- Victor Camilleri", Appell Civili, 14 ta' Frar 1994; "Onor Philip Muscat -vs- Victor Camilleri", Appell Civili, 19 ta' Mejju 1995). Infatti gie espress illi "l-ingurja fil-kamp politiku jew sindakali huwa dak li normalment ma jirrikjedix dak il-grad ta' protezzjoni li hemm bzonn f'attivitajiet socjali ohra". ("A. Fenech pro et noe -vs- Carmelo Callus et noe", Appell Civili, 4 ta' Frar 1994.) Id-decizjoni fl-ismijiet "Vincent Borg -vs- Victor Camilleri et", Appell Civili, 8 ta' Novembru 1994, affermat ghal darb'ohra l-principju, akkolt fil-kazistika tal-Qorti Ewropeja tad-Drittijiet tal-Bniedem, tal-"higher degree of tolerance to criticism" u rrikonoxxiet, fuq l-iskorta tal-Lingens case illi "the limits of acceptable criticism are accordingly wider as regards a politician than as regards a private individual". Fl-istess sens id-decizjonijiet recensjuri tal-istess Qorti Ewropeja "Bladet Troms and Stensaas -vs- Norway", 20 ta' Mejju 1999 u "Bergens Titende and others -vs- Norway", 2 ta' Mejju 2000, citati wkoll mill-Qorti ta' l-Appell fil-kawza "Perit Duminku Mintoff -vs- Dr. Joe Brincat et", 8 ta' Jannar 2001. Fihom gie approfondit id-dibattitu dwar il-limiti ta' l-istampa u l-bilanc li kellu jinzamm bejn dan l-istess dritt u l-interess ta' l-individwu li jipprotegi r-reputazzjoni u l-integrita' tal-karattru tieghu. B'danakollu, kif gja rilevat, kemm il-Qorti Ewropeja kif ukoll il-Qrati taghna dejjem qaghdu attenti illi filwaqt li rrikonoxxew stampa hielsa f'pajjiz demokratiku ammonew ukoll illi dik kellha tkun "stampa responsabbli li kienet obbligata wkoll illi entro l-limiti stabbiliti, topera bir-rispett xieraq tal-persuni li jattiraw l-attenzjoni taghha bhala oggett ta' kritika jew

kumment" ("Onorevoli Perit Charles Buhagiar -vs- Ray Bugeja noe", Appell, 25 ta' Mejju, 2001.) ***Bhala konsegwenza dan iwassal ghall-osservazzjoni li ma jistax ikun accettat illi taht il-parvenza tal-'fair comment' il-kumment isir semplici invettiva jew abbuz***[29]*. Id-decizjoni fl-ismijiet "Reginald Miller -vs- Joseph J. Scorey", Appell Kriminali, 26 ta' April 1948 toffri spjega dettaljata ta' x'jikkostitwixxi "comment" u x'jikkostitwixxi "fair". Jinghad li "the criticism is not "fair" if it is such as any fair man, however exaggerated or obstinate his views, would not have written that criticism". Ghalhekk id-difiza tal-kumment gust taqa' comb ghax kif inhu logiku "the defence of fair comment does not extend to cover misstatement of facts, however 'bona fide' " (Vol XXX III pIV p800; Vol XLIII pIV p1126; Vol XLII pIV p1470; Vol XLIV pIV p874).*

Il-Qorti taghmel referenza wkoll ghad-decizjoni tal-Qorti Ewropeja dwar id-Drittijiet tal-Bniedem fl-ismijiet **Lindon, Otchakovsku and July v. France,** Appl. Nos. 21279/02 u 3644/02 moghtija fit-22 ta' Ottubru 2007, fejn il-Qorti bla tlaqliq ta' xejn iddikjarat li persuna politika, anke jekk kontroversjali u *of an extremist position in the political spectrum*, ghandha ukoll tgawdi mill-protezzjoni tal-Konvenzjoni fir-rigward tal-malafama u libel. In effetti dik il-Qorti ghamlet is-segwenti osservazzjoni: *the Court nevertheless considers that in the present case the Court of Appeal made a reasonable assessment of the facts in finding that to liken an individual, though he be a politician, to the "chief of a gang of killers", to assert that a murder, even one committed by a ficitional character, was "advocated" by him, and to describe him as a "vampire who thrives on the bitterness of his electorate, but sometimes also on their blood", "oversteps the permissible limits in such matters". The Court moreover considers that, regardless of the forcefulness of political struggles, it is legitimate to try to ensure that they abide by a minimum degree of moderation and proprietry, especially as the reputation of a politician, even a controversial one, must benefit from the protection afforded by the Convention. The Court will further have regard to the nature of the remarks made, in particular to the underlying intention to stigmatise the other side, and to the fact that their content is such as to stir up violence and hatred, thus going beyond what is tolerable in political debate, even in respect of a figure who occupies an extremist position in the political spectrum.*

Dak kollu appena osservat japplika wkoll ghall-paragun li l-konvenuta ghamlet bejn Norman Lowell u l-attur u ghall-fatt li poggiethom fl-istess keffa u li prattikament ihaddnu l-istess ideajli. Il-Qorti ma tistax tonqos milli tosserva li dan il-paragun ma sarx semplicement ghal fini ta' paragun izda sar bl-intenzjoni specifika li jinxtehet dawl ikrah fuq l-attur li qed jigi pparagunat ma' persuna ferm kontroversjali fis-socjetà Maltija u li diversi drabi sab ruhhu fic-centru ta' l-attenzjoni minhabba mibeghda razzjali u li, kuntrarjament

[29] Enfasi ta' din il-Qorti.

ghall-attur hekk kif se jirrizulta iktar 'l quddiem f'din is-sentenza, apertament fahhar atti ta' vjolenza fir-rigward ta' immigranti u persuni li huma tolleranti fir-rigward ta' l-immigranti u kritici ta' opposizzjoni harxa ghall-immigrazzjoni.

F'dan ir-rigward il-Qorti taghmel referenza wkoll ghas-silta mill-artikolu intitolat "Black shirts and blacker hearts" ipubblikat fil-harga ta' The Malta Independent on Sunday tal-21 ta' Mejju 2006 fejn il-konvenuta qalet: *Karmenu Mifsud Bonnici did not shoot Raymond Caruana dead or ransack the halls of justice and the seat of the archbishop, but he failed to control the violence of the mob. These are things we lived through – bombs, deaths, shootings, ransacking, threats, fear – so why are we know behaving as though it is out of the question for rabid followers of an extremist organization to set fire to the property of those who criticize them? We, more than others, should know that it is not just entirely possible, but that it is almost certainly the correct explanation of what has been happening. After all we have lived through this kind of thing already.*

Ghalkemm fix-xhieda li tat quddiem il-Qorti fid-9 ta' Mejju 2008 [30] il-konvenuta stqarret illi mhux qed tghid li kien l-attur innifsu li materjalment wettaq l-atti ta' vjolenza li sehhew fil-konfront taghha u fil-konfront ta' terzi li bhalha ikkritikaw lil dawk li jopponu l-immigrazzjoni, huwa evidenti – u dana kif ikkonfermat mill-istess konvenuta fix-xhieda taghha – li hija tikkontendi li l-attur xewwex lil terzi biex jikkommettu tali atti ta' vjolenza. B'din l-affermazzjoni l-konvenuta effettivament qed takkuza lill-attur li wettaq reat kriminali peress illi ai termini tal-Kodici Kriminali li persuna xxewwex lil haddiehor biex iwettaq reat kriminali jikkostitwixxi reat kriminali fih innifsu hekk kif provdut fl-Artikoli 42(e), 68 u 82A tal-Kap.9 ta' l-imsemmi Kodici. F'materja ta' libel u malafama huwa principju stabbilit fis-sistema guridika nostrali li l-assocazzjoni ta' persuna ma' attivitajiet kriminali jew addirittura l-addebitu ta' attività jew reat kriminali minghajr il-bazi ta' ebda prova izda biss imsejsa fuq ragunijiet politici tammonta ghal malafama u dan kif jirrizulta mis-sentenzi fl-ismijiet **L-Avukat Dottor Louis Galea v. Frans Ghirxi bhala editur tal-gurnal "L-Orizzont", Citaz. Nru. 947/99** deciza mill-Prim' Awla tal-Qorti Civili fit-3 ta' Mejju 2002 u **Daphne Caruana Galizia v. Joseph Muscat et, Citaz. Nru.1147/98** deciza mill-Prim' Awla tal-Qorti Civili 8 ta' April 2002.

Huwa veru li fiz-zmien in kiwstjoni kien hemm diversi atti ta' vjolenza fil-konfront ta' persuni li kienu jahdmu mar-refugjati u fil-konfront ta' persuni li kienu jikkritikaw lil min kien fermament kontra l-immigrazzjoni, fosthom il-konvenuta, u allura wiehed jista' jikkonkludi li dawn kienu atti relatati mal-kwistjoni ta' l-immigrazzjoni li dak iz-zmien kienet kwistjoni tahraq hafna hawn Malta. Izda, il-konvenuta ma ressqitx provi li sodisfacentement jorbtu

[30] Fol. 65 u 66 tal-process.

lill-attur jew dak dikjarat mill-attur dwar il-kwistjoni ta' l-immigrazzjoni ma' dawn l-atti partikolarment meta l-attur, kuntrarjament ghal persuni ohra[31], kien pubblikament ikkundanna dawn l-atti hekk kif jirrizulta mill-artikolu li deher fuq timesofmalta.com fit-18 ta' Mejju 2006, kwindi qabel ma' gew ipubblikati l-artikoli mertu tal-proceduri odjerni, esebit mill-konvenuta stess, intitolat *ANR launches campaign against illegal immigration*, esebit mill-konvenuta stess, fejn gie rappurtat illi *ANR had heavily condemned the recent spate of arson attacks, which Mr. Degiorgio described as "terrorist acts", expressing the fear that they could escalate and questioning where they would stop. Those who committed such crimes needed to feel totally isolated and their condemnation had to come from every corner, he said. Apart from damaging democracy, such acts were also working against ANR, which some people were suspecting were behind the attacks. Echoing the Police Commissioner's words, he said it was dangerous to point fingers, adding that those who were involved in human trafficking could also be suspects. Mr. Degiorgio disassociated ANR completely from extreme right wingers and insisted that none of its members had been approached by the police. "It would be crazy for ANR to carry out such acts, particularly in view of the fact that public opinion is on our side". He condemned the "hate climate" generated by both those against illegal immirgration and those in favour of multi-culturalism*[32]. Il-konvenuta mhux talli injorat ghal kollox dan hekk rappurtat dwar ir-reazzjoni ta' l-attur u ta' l-Allejanza Nazzjonali Repubblikana versu l-atti vjolenti li kienu qed jitweqqu f'dawk iz-zminijiet talli fix-xhieda li tat quddiem il-Qorti waqt is-seduta tal-15 ta' Dicembru 2009, il-konvenuta skjettament stqarret illi *jiena ma naf bl-ebda diskors li Martin Degiorgio ghamel fuq il-programm Xarabank fis-sens li huwa kkritika l-vjolenza*. Il-Qorti mhux se tidhol fil-mertu dwar jekk l-attur ikkundannax l-atti ta' vjolenza fuq program televiziv jew le, izda mill-artikolu appena citat jidher car li huwa apertament u pubblikament ikkundanna tali atti, kundanna li l-konvenuta ghogobha tinjora ghal kollox.

Fl-artikolu intitolat "Martin and friends make the news" ippubblikat fil-harga ta' The Malta Independent on Sunday tat-18 ta' Gunju 2006 il-konvenuta stqarret illi: *This is how he was reported in the IHT: "We are a close-knit society and the migrants are, destroying our culture, Degiorgio said from his car, with DVX – the Latin letters for 'Duce', the title of the Italian fascist dictator Benito Mussolini – written on his licence-plate, Degiorgio said he would warn that the Africans risked turning Malta into the toilet of the Mediterranean. 'Islam took Malta by force, and now the Africans are invading us silently,' he said".*

[31] Vide sentenza fl-ismijiet Norman Lowell v. Saviour Balzan pro et noe et, Rik. Nru. 328/06 deciza mill-Qorti tal-Magistrati (Malta) fit-23 ta' Ottubru 2015, liema sentenza però giet appellata u tinsab pendent quddiem il-Qorti ta' l-Appell (Sede Inferjuri).
[32] Fol. 169 u 170 tal-process.

L-attur kategorikament cahad li huwa qal li *the Africans risked turning Malta into the toilet of the Mediterranean* u fil-fatt mill-estratt mehud mill-*website* ta' l-International Herald Tribune esebit mill-konvenuta bhala Dok. "CGD5"[33] ta' l-artikolu in kwistjoni u fejn il-konvenuta tallega li l-attur qal *the Africans risked turning Malta into the toilet of the Mediterranean,* ma jirrizultax li gie riportat li l-attur effettivament qal hekk. Il-parti relattiva ghall-attur u kjarament immarkata mill-konvenuta tghid hekk: *Martin Degorgio, a travel agent and amateur historian who participates in mock historical battles re-enacted on the island, recently founded the Republican National Alliance, an anti-migrant pressure group, He is lobbying the government to repatriate the migrants, arguing that the 'boat people' are threatening the country's social fabric, taking Maltese jobs and draining government funds. "We are a close-knit society and the migrants are destroying our culture", Degiorgio said from hijs car, with DVX – the Latin letters for "Duce", the title of the Italian Fascist dictator, Benito Mussolini – written on his number plate.* Mid-dokument esebit mill-konvenuta a fol. 137 tal-process li huwa artikolu intitolat *Illegal Immigrant assaults police constable* datat 8 ta' Gunju 2006 li deher fuq il-*webiste* ta' MaltaMedia jirrizulta li gie riportat is-segwenti dwar l-attur: *"The arrival of so many migrants in this insular, overwhelmingly Roman Catholic country is spawning a backlash, the International Herald Tribune said while recalling the recent arson fires such as the one at the Jesuit Service … Martin Degiorgio, who recently founded the Republican National Alliance, an anti-migrant pressure group, was also mentioned. "He is lobbying the government to repatriate the migrants, arguing that the 'boat people' are threatening the country's social fabric, taking Maltese jobs and draining government funds; the article said while adding that Degiorgio said he would warn that the Africans risked turning Malta into the toilet of the Mediterranean.*

Fil-fehma tal-Qorti l-konvenuta semplicement irrappurtat dak li deher f'dan l-artikolu tal-MaltaMedia minghajr però ma effettivament irrappurtat dak li attwalment inghad fil-konfront ta' l-attur fl-artikolu ta' l-International Herald Tribune, minkejja l-fatt li jidher li kkonsultat dan l-ahhar artikolu. Kemm-il darba verament fl-International Herald Tribune gie rappurtat li l-attur qal *that the Africans risked turning Malta into the toilet of the Mediterranean* il-Qorti ma ghandhiex dubju li l-konvenuta kienet tesebixxi din il-parti ta' l-artikolu wkoll, haga li però – kif appena osservat – ma ghamlitx.

Fid-dawl ta' dan kollu osservat il-Qorti hija fermament konvinta li dak riportat mill-konvenuta fir-rigward ta' l-attur fl-artikoli mertu tal-proceduri odjerni huwa libelluz u malafamanti. Fir-rigward ta' l-*animus injurandi* ssir referenza ghas-sentenza fl-ismijiet **Dr. Sandra Caruana v. Joe Mifsud, Appell Civili Nru. 1195/97** deciza mill-Prim' Awla tal-Qorti Civili fit-30 ta' Marzu 2001 u kkonfermata mill-Qorti ta' l-Appell fl-24 ta' Settembru 2004, fejn il-

[33] Fol. 51 tal-process.

Qorti ta' l-Appell osservat illi *hi gurisprudenza, tista' tghid kostanti, tal-qrati taghna, li meta si tratta ta' kliem li huma fihom infushom ingurjuzi, l-animus injuriandi huwa prezunt (ara, inter alia, L-Onor. Professur John Rizzo Naudi v. Felix Agius u Carlo sive Charles Mizzi Qorti ta' l-Appell, 13 ta' Mejju, 1997; Avukat Dottor Tonio Azzopardi v. Victor Aquilina et Qorti ta' l-Appell, 27 ta' Gunju, 2003; u s-sentenza moghtija llum stess minn din il-Qorti fl-ismijiet Avukat Dottor Louis Galea v. Frans Ghirxi et). Fl-fehma ta' din il-Qorti il-kliem, b'referenza ghall-kelma "malafama" fl-Artikolu 28(1), "...li l-ghan taghha jkun li tellef jew tnaqqas ir-reputazzjoni ta' xi persuna..." (fit-test Ingliz "...the object of which is to take away or injure the reputation of any person...") ma jirriferux ghal xi intenzjoni specifika jew motiv ulterjuri li jrid ikollu l-awtur tal-kitba, l-editur jew il-persuna responsabbli ghall-pubblikazzjoni, izda jirreferu ghat-tendenza tal-kliem sampat jew tal-kliem imxandar li jtellef jew inaqqas ir-reputazzjoni ta'dak li jkun. "The question is not what the defendant intended, but what reasonable men, knowing the circumstances in which the words were published, would understand to be the meaning. 'Liability for libel does not depend on the intention of the defamer, but on the fact of the defamation'. 'The question is not what the writer of an alleged libel means, but what is the meaning of the words he has used'. 'It is not the defendant's intention, or the meaning in his own mind, that makes the sense of the libel' but 'what was the meaning and inference that would naturally be drawn by reasonable and intelligent persons reading it'."* Il-Qorti ghalhekk hija tal-fehma li l-*animus injurjandi* rikjest mill-Ligi effettivament jissussisti fil-kaz in ezami.

In fine jigi osservat li l-attur jitlob li l-konvenuta tigi kkundannata thallsu ammont likwidat minn din il-Qorti in linea ta' danni ai termini ta' l-Artikolu 28 tal-Kap.248 tal-Ligijiet ta' Malta. L-imsemmi artikolu tal-Ligi jipprovdi li *fil-kaz ta' malafama b'xi mezz imsemmi fl-artikolu 3 ta' dan l-Att, li l-ghan taghha jkun li ttellef jew tnaqqas ir-reputazzjoni ta' xi persuna, il-qorti civili kompetenti tista' minbarra d-danni li jistghu jintalbu taht xi ligi li tkun fis-sehh f'dak iz-zmien dwar telf jew hsara attwali, taghti lill-persuna offiza somma ta' mhux izjed minn hdax-il elf, sitt mija u sitta u erbghin Euro u sebgha u tmenin centezmu (€11,646.87)* u minnu johrog car li l-likwidazzjoni tad-danni li ghandhom jigu akkordati hija mhollija fid-diskrezzjoni tal-Qorti li ghandha ghal dan il-fini tiehu in konsiderazzjoni l-gravità tal-kaz li jkun quddiemha.

Peress illi fil-fehma tal-Qorti dak affermat mill-konvenuta fir-rigward ta' l-attur fl-artikoli intestati "Black shirts and blacker hearts" u "Martin and friends make the news", pubblikati fil-gazzetta "The Malta Independent on Sunday" fl-edizzjoni tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006 rispettivament huma ta' certa gravità u serjetà, il-kumpens dovut lill-attur in linea ta' danni minhabba l-malafama kawzata b'dawk iz-zewg artikoli ghandu jkun fis-somma ta' €2,400.

Ghal dawn ir-ragunijiet il-Qorti taqta' u tiddeciedi l-kawza billi filwaqt li tichad l-eccezzjonijiet kollha tal-konvenuta, tilqa' t-talbiet ta' l-attur u filwaqt li tiddikjara li l-artikoli intestati "Black shirts and blacker hearts" u "Martin and friends make the news", pubblikati fil-gazzetta "The Malta Independent on Sunday" fl-edizzjoni tal-21 ta' Mejju 2006 u tat-18 ta' Gunju 2006 rispettivament huma malafamanti u libelluzi fil-konfront ta' l-attur stante li siltiet minnhom ghandhom l-iskop li jtellfu jew inaqqsu r-reputazzjoni tieghu, tillikwida l-kumpens dovut lill-attur in linea ta' danni a tenur ta' l-Artikolu 28 tal-Kap.248 tal-Ligijiet ta' Malta fis-somma ta' €2,400 u tikkundanna lill-konvenuta thallas lill-attur l-imsemmija somma ta' €2,400, bl-imghax legali dekoribbli mid-data ta' din is-sentenza sad-data ta' l-effettiv pagament.

L-ispejjez ta' dawn il-proceduri jibqghu a karigu tal-konvenuta.

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