



FIL-QORTI TAL-MAGISTRATI TA' MALTA

MAGISTRAT DR FRANCESCO DEPASQUALE

Seduta ta' nhar it-Tnejn disgha u ghoxrin (29) ta' Frar 2016

Rikors Numru 324/12 FDP

Dr Joseph Muscat
(ID 110274M)

vs

Lawrence Gonzi (ID 489953M), Paul Borg Olivier (ID 337169M) u Marthese Portelli (15276G) rispettivament bhala Kap, Segretarju Generali u President tal-Kumitat Ezekuttiv u in rappresntanza tal-Partit Nazzjonalista u, wara rikors ippresnetat fl-14 ta' Gunju 2013, Dr Simon Busuttil, Dr Chris Said u Dr Ann Fenech assumew l-atti rispettivament bhala Kap, Segretarju Generali u President tal-Kumitat Ezekuttiv u Partit Nazzjonalista

Il-Qorti:-

Rat ir-rikors promotur ippresentat fis 27 ta' Settembru 2012 fejn ir-rikorrenti, filwaqt illi ghamel referenza ghal kartelluni ossija *billboards* imwabhla madwar Malta fis-26 ta' Settembru 2012, talab lill-Qorti tiddikjara illi l-intimati ghamlu allegazzjoni falza u malafamati fil-konfront tar-rikorrenti meta gie allegat illi huwa qal diskors fis-sens li jrid jiffriza l-paga minima meta tali allegazzjoni m'hijiex minnha u giet imcahnda mir-rikorrent pubblikament. Ir-rikorrent ghalhekk talab lill-Qorti tikkundanna lill-intimat ihallsuh danni a tenur tal-Kap 248.

Rat ir-risposta ta' l-intimati ippresentata fit-13 ta' Novembru 2012 fejn sahuq illi l-pubblikazzjoni ma kienetx libelluza u kienet tammonta ghal fair comment bbazata fuq fatti sostanzjalment korretti li huma materja ta' interess pubbliku li huma intitolati jaghmlu.

Rat id-dokument ossija ir-ritratt tal-billboard meritu tal-kawza odjerna, ippresentat fl-14 ta' Gunju 2013 fejn juri ritratt tar-rikorrent b'idu x-xellugija sporguta 'l barra u jzomm silga f'idu, fuq liema bicca silg kien hemm il-kliem "**PAGA minima**" u mal gemb il-kliem '**MUSCAT: Jiffriza l-paga minima**' filwaqt illi fil-parti ta' isfel fuq il-lemin, kemm kaxxa zghir bi kliem fiha "**Labour won't work**"

Semghet ix-xhieda tal-Prim Ministru **Dr Joseph Muscat** moghtija fis 7 ta' Frar 2014.

Rat id-dokumentazzjoni esebita mir-rikorenti fit 30 ta' Gunju 2014, ossija l-Istqarrija tal-Partit Laburista tat-18 ta' Settembru 2012, l-Istqarrija tal-Partit Laburista tad-19 ta' Settembru 2012 u d-Diskors ta' Dr Lawrence Gonzi tat-23 ta' Settembru 2012.

Semghet ix-xhieda ta' **Kurt Farrugia** moghtija fit 30 ta' Gunju 2014.

Rat illi fl-10 ta' Ottubru 2014 ir-rikorrent iddikjara illi ma kellux aktar provi x'jipresenta.

Semghet ix-xhieda ta' **Dr Paul Borg Olivier** moghtija fis 27 ta' Novembru 2014 u fit 23 ta' Marzu 2015 kif ukoll id-dokumentazzjoni minnu esebita.

Rat illi fil 21 ta' Mejju 2015 l-intimati ddikjaraw illi ma kellhomx aktar provi x'jipresentaw.

Rat illi fl-1 ta' Ottubru 2015 l-intimati ippresentaw recording ta' diskors tar-rikorrenti li tieghu l-intimati kienu ppresentaw transcript tieghu.(fol 58).

Rat illi fit 23 ta' Novembru 2015 il-partijiet iddikjaraw illi ma kellhomx aktar provi w il-kawza setghet tithalla ghallfinali trattazzjoni.

Semghet it-trattazzjoni ta' l-abbli difensuri tal-partijiet moghtija fil 25 ta' Jannar 2016, wara liema data il-kawza thalliet ghas-sentenza.

Ikkunsidrat

Jirrizulta illi, fit 18 ta' Settembru 2012, hekk kif kienet ghaddeja il-kampanja elettorali ghall-elezzjoni generali ta' Marzu 2013, il-Partit Laburista kellu l-Kungress Nazzjonali, f'liema kungress l-intimat, bhala Kap tal-Partit Laburista, u dak iz-zmien Kap tal-Opposizzjoni, indirizza lid-delegati u kull min kien presenti.

Jirrizulta illi dakinhar, skond Stqarrija tal-Partit Laburista mahruqa daknihar stess (fol 25), kien irrappurtat illi r-rikorrent qal is-segwenti:

“Dr Muscat qal li jkun inutili ngholu l-minimum wage jekk l-ispejjez jibqghu joghlew. Din ma ssolvix il-problemi, anzi tkun qed issallab iktar lil min ihaddem u titfa lis-settur industrijali u x-xoghol f'incertezza. Illum, fic-cirkostanzi ekonomici li pajjizna qed jiffaccja, li tgholli l-minimum wage mhijiex l-ikbar priorita'. Huwa qal li b'hekk il-Gvern Gdid se jkun qed irahas il-kontijiet tad-dawl u l-ilma. B'hekk inkunu qed nghinu l-kompettitivita tal-intrapriza, imma nghinu ukoll lil dik il-klassi ta' nies li qieghdin fuq il-minimum wage u lill-klassi medja. Dan ikun ifisser tnaqqis fl-ispejjez tal-familji u livell ta' ghejxien ahjar ghal kategoriji differenti.”

Jirrizulta illi l-ghada, 19 ta' Settembru 2012, il-Partit Laburista hareg stqarrija (fol 27) fejn qal illi :

“Il-Kungress tal-Partit Laburista llejla approva zewgt linji gwida fil-qasam tal-Finanzi u l-Ekonomija. Ghall-qasam tal-finanzi l-linja gwida ghall-manifest elettorali se tkun ‘Ghaqal bi Flusek’, filwaqt li fil-qasam tal-Ekonomija se tkun ‘Tkabbir Ekonomiku li Jilhaq lil Kullhadd’.”

Dwar il-kwistjoni imsemmija mir-rikorrent fl-Istqarrija tat 18 ta' Settembru 2012, gie rrapportat illi r-rikorrent qal is-segwenti:

“Il-pern tas-soluzzjoni li qed nipproponu huwa bbazat fuq t-tkabbir ekonomiku.

Ghalhekk, mhux qed nghidu iva ghal kollox u lil kullhadd. B'hekk tkellimna fuq il-minimum wage u li din ma toghlix, Kellna reazzjonijiet differenti u kien hemm nies genwini qaluli missek ghamiltha din il-weghda ghax terbah il-voti. Imma konna nsallbu lill-privat u lill-employer u ndahhlu iktar diffikultajiet li jwasslu ghal zieda fil-prekarjat. Konna nzidu u mhux innaqqsu l-problemi. Allura soluzzjonijiet se jkun biex intejbu l-livell tal-ghejxien. Gvern li jiehu mizuri biex il-privat jinvesti u jiftah aktar.”

Jirrizulta illi fit 23 ta' Settembru 2012, waqt diskors pubbliku illi sar ir-Rabat, Ghawdex, Dr Lawrence Gonzi, dak iz-zmien Kap tal-Partit Nazzjonalista, qal is-segwenti kliem (fol 30):

“Ghaliex issa, ha nikkwota l-kliem precizi li qal Dr Muscat f'dat-tlett ijiem li ghaddew:

‘Inutili nghollu l-minimum wage, illum fic-cirkostanzi ekonomici li pajjizna qieghed jiffaccja, li tgholli l-minimum wage mhijiex l-iktar priorita.’

Mela issa x'inhil affari kollha. Il-Labour ser jiffriza l-paga minima, Attenti, ftakru. Lahhar darba li smajna l-kelma friza kienet ta' Gvern Soċjalista Laburista li qal il-problemi tal-finanzi tal-pajjiz tafu kif se nsolvuhom? Billi niffriżaw il-pagi. U minghalih li ried jikkontrolla l-gholi tal-hajja billi ma jhallix li jidhlu prodotti f'Malta, il-famuza ekonomija ta' Mintoff.”

Jirrizulta illi, sussegwentement, fis-26 ta' Settembru 2012, il-Partit Nazzjonalista kien hareg fit-toroq ta' Malta u Ghawdex ‘Billboard’, illi huwa l-meritu tal-kawza odjerna, li juri lir-rikorrent b'silga f'idejh fuq liema silga hemm il-kliem ‘paga minima’, u hdejn ir-rikorrenti, bi tipa kbira, il-kliem “Muscat: jiffriza l-paga minima” (fol 11)

Ikkunsidrat

Jirrizulta mhux kkontestat illi fiz-zmien meta saru tali diskorsi u inhareg il-billboard meritu tal-kawza odjerna, kienet bdiet il-kampanja elettorali illi eventwalment wasslet ghall-Elezzjoni Generali ta' Marzu 2013.

Jirrizulta illi, fil-Kungress Nazzjonali tal-Partit Laburista, ir-rikorrent, kien kwotat mill-Partit Laburista stess illi qal “jkun inutili nghollu l-minimum wage jekk l-ispejjez jibqghu joghlew” (fol 25), kif ukoll “b'hekk tkellimna fuq il-minimum wage u li din ma toghlix” (fol 27).

Jirrizulta wkoll illi r-rikorrent, waqt illi kien qieghed jghid tali dikjarazzjoni, qal ukoll illi “l-Gvern Gdid se jkun qed irahha il-kontijiet tad-dawl u ilma. B'hekk inkunu qed nghinu l-kompettivita tal-intrapriza, imma nghinu ukoll lill dik il-klassi ta' nies li qieghdin fuq il-minimum wage u lill-klassi media”

Jirrizulta illi l-Partit Nazzjonalista, dak iz-zmien fil-gvern, qabad ma' tali dikjarazzjonijiet u, fi kliem Dr Lawrence Gonzi, dak iz-zmien Kap tal-Partit Laburista, “Il-Labour ser jiffriza l-paga minima”.

Jirrizulta illi dana eventwalment wassal ghall-billboard illi dwaru saret il-kawza odjerna.

Ikkunsidrat

Id-difiza mressqa mill-intimati hija, principalment, dik ta' 'fair comment', stante illi saħqu illi l-pubblikazzjoni hija bbazata fuq fatti sostanzjalment korretti fuq persuna involuta fil-hajja pubblika.

Dwar il-livell ta' kritika li politiku tista ssirlu, kif gie stabbilit fid-decizjoni tal-European Court of Human Rights fis-sentenza **Ligens vs Austria**, u abbraccjata mill-Qorti Maltin, intqal illi:-

... freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Dwar id-difiza ta' 'fair comment', kif jinghad f' **Gatley on Libel and Slander** :

To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Kif inghad minn Lord Justice Scott fil- kawza **Lyon v. Daily Telegraph**:

The right of fair comment is one of the fundamental rights of free speech and writing which are so dear to the British nation, and it is of vital importance to the rule of law on which we depend for our personal freedom.

Ikkunsidrat

Il-Qorti tosserva illi l-kummenti illi saru u li dwaru qieghda ssir l-azzjoni odjerna kienet waqt li kienet ghaddejja kampanja elettorali.

Kif intqal mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fil-kawza **Bowman v. The United Kingdom** deciza fid-19 ta' Frar 1998

"42. Free elections and freedom of expression, particularly freedom of political debate, together form the bedrock of any democratic system (see the Mathieu-Mohin and Clerfayt v. Belgium judgment of 2 March 1987, Series A no. 113, p. 22, § 47, and the Lingens v. Austria judgment of 8 July 1986, Series A no. 103, p. 26, §§ 41-42). The two rights are inter-related and operate to reinforce each other: for example, as the Court has observed in the past, freedom of expression is one of the 'conditions' necessary to 'ensure the free expression of the opinion of the people in the

choice of the legislature' (see the above-mentioned Mathieu-Mohin and Clerfayt judgment, p. 24, § 54). For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely”

Fil-kawza **Lindon Otchakovsy-Laurens and July vs France**, deciza mill-Qorti Ewropeja ghad-Drittijiet tal-Bniedem fit 22 ta' Ottubru 2007, intqal is-segwent:

45. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly.

*46. There is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance (see *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006) – or in matters of public interest (see, among other authorities, *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV, and *Brasilier*, cited above).*

*Furthermore, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance (see, for example, *Lingens*, cited above, § 42; *Vides Aizsardzības Klubs v. Latvia*, no. 57829/00, § 40, 27 May 2004; and *Brasilier*, cited above).*

Finalment, kif osservat dina l-Qorti fil-kawza '**Jesmond Mugliette vs Dr Alfred Sant**' Avviz 39/08 deciza fl-10 ta' Marzu 2014 u mhux appellata,

Din il-Qorti thoss illi wasal il-mument illi tali regola (ta' kritika politika) titwessa aktar fis-sens illi meta jkun hemm dibattitu politiku ghaddej bejn politici, tali livell ta' kritika ghadha interpretata f'livell aktar wiesgha minn dak ipprovdut hawn fuq, peress illi d-dibattitu politiku huwa l-pern ta' socjeta demokratika u, ghalhekk ghandha tigi protetta u stimolata minn dina l-Qorti u mhux imxekkla fl-operat taghha.

Ikkunsidrat

Jirizulta ippruvat illi r-rikorrent, f'diskors tieghu, kien qal illi meta jkun fil-Gvern, ma kienetx ser tkun priorita tal-Gvern illi l-paga minima kienet ser toghla peress illi l-priorita' tagghom kienet illi jittrahsu l-konitjiet tad-dawl u tal-ilma.

Jirrizulta illi tali diskors sar waqt kampanja elettorali u wassal sabiex ghaqdiet bhal FOR.U.M, li hija ghaqda ta' trade unions, kif ukoll l-Alternattiva Demokratika, illi kienet qieghda tippartecipa hija wkoll fl-elezzjoni generali, wrew it-thassib tagghom ghad-dikjarazzjoni tar-rikorrenti illi l-paga minima ma kienetx ser tizdied. Ghaqdiet ohra, bhal GWU, UHM u Malta Employers Association, saħqu illi dawk illi kellhom paga minima kellhom jigu mghejuna b'xi mod minghajr ma tali ghajnuna xxekkel l-industrija lokali. (fol 48 – 50)

Jirrizulta, ghalhekk, illi l-messagg li hareg mill-kliem tar-rikorrenti, kien illi l-paga minima ma kienetx ser tintmiss u kienet ser tibqa l-istess, liema messagg kellu reazzjonijiet differenti fost il-varji korpi kostitwiti u partiti politici.

Jirrizulta illi, ghal-Partit Nazzjonalista, tali messagg gie interpretat bhala illi l-paga kienet ser tigi ffrizata, liema messagg r-rikorrent hassu urtat dwarha u ghalhekk nieda l-proceduri odjerni.

Il-Qort tosserva illi d-dritt illi wiehed jaghmel kumment politiku huwa dritt sancit fid-dritt tal-liberta ta' l-espressjoni, u li ghandha tigi protetta minn dina l-Qorti stante illi hija riflessjoni ta' socjeta demokratika sana u miftuha ghad-dibattitu fl-ahjar interess tac-cittadin illi ghandu d-dritt illi jinghata stampa cara ta' dak illi qieghed jigi lilu propost minn kull partit politiku, partikolarment waqt li tkun ghaddejja kampanja elettorali.

Apparti minn hekk, il-Qorti tosserva illi jirrizulta li, bhala fatt, ir-rikorrent kien qal illi l-paga minima ma kienetx ser tizdied, ghalkemm ma uzax il-kliem “*iffrizata*”, kif qal il-Kap tal-Partit Nazzjonalista ta' dan iz-zmien, Dr Lawrence Gonzi, u l-Partit Nazzjonalista fil-kampanja elettorali tieghu.

Kif qalet din il-Qorti fil-kawza **Dr Lawrence Gonzi vs Josef Caruana** deciza fit-18 ta' Jannar 2016

... peress illi l-fatti kif fuq esposti jirrizultaw sostanzjalment veri u, aktar u aktar, in vista tal-fatt illi r-rikorrent huwa persuna politika illi hija soggetta ghall-livell ta' kritika gholja kif ukoll anke ghal provokazzjoni u esagerazzjonijiet, tali kumment ghandu jitqies bhala wiehed accettabbli fis-socjeta demokratika Maltija u certament ma hijiex malafamanti u libelluza fil-konfront tar-rikorrenti peress illi kien kumment illi kien jirrifletti l-hsiebijiet ta' l-intimat ibbazati fuq fatti illi huwa kien ikkonstata u li dwarhom hass illi kellu jikkummenta f'dak is-sens.

Il-Qorti ghalhekk tqis illi l-*Billboard* li dwaru r-rikorrent qieghed jilmenta, ma huwiex malafamanti fil-konfront tieghu, peress illi huwa bbazat fuq fatti sostanzjalment veri u huwa espressjoni ta' liberta ta' hsieb illi ghandha tkun il-bazi tas-socjeta taghna, u li minghajrha ma nistghux inqisu lilna nnfusna bhala pajjiz demokratiku.

Konkluzjoni

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

Tghaddi biex taqta u tiddeciedi l-kaz billi

Tilqa l-eccezzjonijiet kollha ta' l-intimati,

Tichad it-talbiet attrici.

Spejjez tal-proceduri kollha a kariku tar-rikorrenti.

Magistrat Francesco Depasquale

Marisa Bugeja
Deputat Registratur