

Fil-Prim Awla tal-Qorti Civili

Liam Debono

-vs-

Avukat Generali

Protest Gudizzjarju ta' Liam Debono detentur ta' karta tal-identita' numru 187301L;

Jesponi bir-Rispett:

1. Illi Liam Debono tressaq il-Qorti b'arrest akkuzat *inter alia* bl-attentat ta' qtil tal-kuntistabbli Simon Schembri fis-16 ta' Mejju 2018 u illi **appena 3 ijiem wara** giet organizzata dimostrazzjoni pubblika mill-Pulizija, ovvjament fil-kuntest tal-fatti li taw lok ghal proceduri u akkuzi fil-konfront ta' Liam Debono fejn fost l-ohrajn attendiet ghall-istess manifestazzjoni l-President Marie Louise Coleiro Preca li sahsitra mexxiet id-dimostrazzjoni flimkien mal-Kummissarju tal-Pulizija u illi ghaldaqstant huwa ultra ovvju u car illi tali protesta kienet skattata minn, fil-kuntest ta', u tlett ijiem biss wara l-episodju li ta lok ghal proceduri kontra l-protestant u illi ghalhekk il-protesta hija intrinsikament u intimament marbuta mal-fatti li taw lok ghall-akkuzi kontra l-protestant Liam Debono;
2. Illi kull persuna akkuzata ta' reat ghandha d-dritt ghal smiegh xieraq fi zmien ragjonevoli minn Qorti **indipendenti u imparzjali** u ghar-rispett shih tal-presunzjoni tal-innocenza li huma uhud jekk mhux l-aktar principji fundamentali fis-sistema taghna u sistemi li jirrispettaw ir-rule of law. Illi dawn id-drittijiet fundamentali japplikaw ghal kull persuna hi min hi u ghall kull reat hu li hu;
3. Illi preliminarjament jinghad illi l-President solitament u b'mod generali tenuta ma tippartecipax f'materji ta' kontroversja u xejn ma jista jkun kontroversjali aktar minn proceduri kriminali appena inizjati u pendent quddiem il-Qorti. Illi inoltre minhabba l-awtorita' morali li ggorr maghha l-Presidenza, il-partecipazzjoni taghha f'tali protesta facilment jikkrea pregudizzju irrimedjabbli ghall-protestant peress li jista jikkundizzjona l-opinjoni pubblika u dan fil-

kuntest illi mill-pubbliku in generali jridu jintghazlu l-gurati eventwali fl-eventwalita' li dan il-kaz jigi deciz minn guri kif solitament jigri f'kawzi ta' tentattiv ta' omicidju;

4. Illi inoltre l-President tippresjedi l-Kummissjoni għall-Ammunistrazzjoni tal-Gustizzja u dan meta huwa ovvju li l-istess gudikatura hija l-organu inkarigat li jwettaq gustizzja f'dan l-pajjiz inkluz f'dan il-kaz u għaldaqstant l-fatt li skjerat ruhha b'mod partikolari jista jippregudika ulterjorment d-drittijiet tal-protellant għal smiegh xieraq u dan ai termini tal-Artiklu 39 tal-Kostituzzjoni ta' Malta u l-Artikolu 6 (1) u 6 (2) tal-Konvenzjoni Ewropea għad-Drittijiet tal-Bniedem;
5. Illi l-President skjerat ruha b'mod partikolari f'mument fejn mhux talli l-kaz kien għadu mhux deciz talli lanqas biss għadu jinstema'. Illi per eżempju sussegwentement irrizulta mill-provi minn xhud okulari indipendenti illi l-Pulizija vittma f'dan il-kaz hareg għan-nofs minn jeddu biex iwaqqaf vettura li ra miexja fid-direzzjoni tiegħu. Illi rrizulta wkoll mix-xhieda tal-istess vittma illi huwa ma għamel l-ebda sforz jew tentattiv biex iwarrab min-nofs meta ra vettura li gejjja fid-direzzjoni tiegħu. Illi la dakinhar tal-protesta u lanqas li illum il-kaz għadu pendent għadu ma giex stabbilit b'certezza x'kontribut dan l-agir tal-Pulizija seta' kellu biex sehħ dan il-kaz liema agir inter alia imur kontra l-best practice rules ta' Ufficjali tal-Pulizija fejn f'cirkostanzi simili l-Pulizija huma tenuti li jgħaddu minn wara l-vettura u mhux minn quddiema. Illi dan kollu qed jingħad biss bhala eżempju ta' hafna punti ta' kontroversja li jistgħu jigu decizi biss wara li dan il-kaz jiehu l-kors tiegħu skont il-ligi, jigi deciz f'serenita u b'rispett shih lejn id-drittijiet kollha tal-partijiet involuti inkluz tal-akkuzat u b'rispett shih lejn id-drittijiet ta' smiegh xieraq minn Qorti indipendenti u imparzjali u mingħajr indhil, kundizzjonament jew influwenzi esterni jew tentattivi jew sfumaturi tal-istess;
6. Illi għandu jkun il-process **fi tmiem tiegħu** u b'rispett shih lejn id-drittijiet tal-partijiet kollha li jiddetermina jekk dan l-episodju sfortunat giex precipitat minn jew kienx kontribwit sostanzjalment minn xi protagonizmu zejjed, nuqqas ta

gudizzju ghaqli u nuqqas t'osservanza ta' *best practices* da parti tal-vittma li hareg ghan-nofs biex iwaqqaf vettura miexja u mhux minn *trial by the media*;

7. Illi al kull bon fini filwaqt li l-Pulizija ghandhom ikunu rispettati u l-ordnijiet taghhom ghandhom ikunu osservati, wiehed ma jimmaginax li xi Pulizija ghandu jghaddilu minn mohhu li jista' fizikament iwaqqaf vettura miexja li tkun gejjja fid-direzzjoni tieghu billi johorgilha ghan-nofs;
8. Illi bhala ezempju ulterjuri l-President skjerat ruha b'mod li jista' johloq pregudizzju irrimedjabbli ghas-smiegh xieraq ta' dan il-klaz meta kien ghadu mhux maghruf xi problemi kellu fit-trobbija tieghu Liam Debono li probabbilment jikkwalifika bhala social case *par excellence* u f'dan il-kuntest jista' wiehed anke jikkummeta ladarba il-President oghgobha tidhol f'din il-materja ta' kontroversja kbira li fil-perjodu li Liam kien ghaddej minn diffikultajiet fit-trobbija tieghu l-istess President kienet Ministru tal-Politika Socjali u ghalhekk dan il-kaz jista' jkun indikazzjoni ta' falliment partikolari fis-sistema edukattiva u socjali fil-kuntest fejn in-nukleju familjari ma' kienx ta' sostenn adegwat;
9. Illi fil-fatt, irrizulta mix-xhieda tal-Ispettur Malcolm Bondin tal-hdax (11) ta' Settembru illi l-protestant allegatament kien jigi moghti d-droga cannabis mill-eta' tenera ta' disa' snin minn ommu stess u dan sabiex ikun jista' jorqod. Illi f'socjeta' demokratika meta n-nukleu familjari sfortunatament ifalli ghanda tkun s-sistema edukattiva u dik ta' sostenn socjali li tidhol forcina, pero jidher li f'dan il-kaz ma sehh xejn min dan kollu. Illi imbaghad min-naha l-ohra ma jidhirx li l-President qatt ikkumentat fuq dan l-aspett socjali u pjetuz;
10. Illi inoltre ladarba l-President ghogobha tinvolvi ruhha f'din il-materja ta' kontroversja kbira **peress illi hemm proceduri pendenti**, huwa opportun illi jigi rilevat illi l-istess President tinsab personalment konvolta f'kaz simili konness mal-attivita' Paqpaqli fejn hemm proceduri civili pendenti quddiem il-Qorti presjeduta mill-Imhalled Lawrence Mintoff inkluz kontra l-President personali oltre proceduri kriminali quddiem il-Magistrat Aaron Bugeja fejn hemm diversi

nies akkuzati u f'liema incident korrew serjament sbatax-il ruh u fejn sahanitra wiehed mill-vittmi soffra dizabilita' ta' 99%;

11. Illi tenut kont tal-awtorita' morali tal-Prezidenza, il-partecipazzjoni taghha f'tali protesta jwassal ghal-pregudizzju irrimedjabbli ghal protestant fejn tista tghid li sahanitra l-**presunzjoni tal-innocenza** tant fundamentali fis-sistema taghna giet konvertita fi **presunzjoni ta htija** u fi pregudizzju kbir kontra l-protestant **QABEL BDEW JINSTEMGHU L-PROCEDURI** fejn is-socjeta' inkluz il-President bhal speci kienet diga ghaddiet il-gudizzju finali taghha qabel ma beda jinstema' l-kaz;
12. Illi l-presunzjoni tal-innocenza ma tfissirx biss li persuna tista tigi kompletament liberata mill-akkuzi kollha migjuba fil-konfront taghha izda tista tfisser ukoll illi persuna tigi misjuba hatja biss ta' xi reati fost dawk addebitati jew reati ferm minuri u inqas minn dawk addebitati u illi l-pre-trial prejudicial publicity jimpingi serjament b'mod negattiv u rreparabbli fuq tali presunzjoni tal-innocenza tant krucjali ghal kull process kriminali u protetta mill-Kostituzzjoni ta' Malta u tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem;
13. Illi l-presenza tal-President fi protesta konnessa mal-kaz pendent ta' Liam Debono jista' jippregudika l-kaz tal-protestant u jikser id-drittijiet tieghu ghal smiegh xieraq inkluz il-presunzjoni tal-innocenza protetti mill-Kostituzzjoni ta' Malta, mill-Konvenzjoni Ewropea u mill-Kodici Kriminali;
14. Illi ghalkemm huwa dritt illi s-socjeta' tkun informata' b'avvenimenti kurrenti u tesprimi ruhha dwarhom u dan in vista tal-liberta tal-espressjoni, hemm bilanc li jrid jigi skrupolozament mizmum fejn is-socjeta' ma ghandiex tigi influwenzata jew ikkundizzjonata b'tali mod bhalma gara fil-kaz odjern fejn il-protestant kwazi diga' qieghed jigi kkunsidrat bhala hati u dan qabel ma' l-process kriminali sabiex jiddetermina tali apprezzament tal-provi kien ghadu lanqas biss beda. Illi dan jikkostitwixxi *trial by media* fejn is-socjeta' generali bl-esponenti taghha tkun iddeterminat il-htija o meno tal-akkuzat u dan kuntrarju ghal dak li

suppost jigri f'socjeta' demokratika fejn tirrenja s-saltna tad-dritt fejn il-htija o meno tal-akkuzat ghandha tigi determinata mill-Qorti li tkun qed tisma' l-kaz jew mill-gurati f'dawk il-kazijiet fejn l-akkuzat ikun ghadha guri;

15. Illi l-Protestant jaghmel referenza ghall-kaz fl-ismijiet **Attorney General for New South Wales v X**, fejn Mason P qal:

A verdict of guilt and ensuing punishment must be the product of a fair trial. The rule of law can settle for nothing less. Trial by media cannot be tolerated in a civilised society.

16. Illi inoltre ssir referenza ghall-kaz **Barberà, Messegué and Jobardo vs. Spain** fejn intqal hekk:

Paragraph 2 embodies the principle of the presumption of innocence. It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare ad present his defence accordingly, and to adduce evidence sufficient to convict him.

17. Illi ssir referenza wkoll ghall-kaz tal-Qorti Ewropea ta' Strasburgu fl-ismijiet Akay vs Turkey fejn inqal hekk:

123. The Court reiterates that a virulent press campaign can adversely affect the fairness of a trial by influencing public opinion and, consequently, jurors called upon to decide the guilt of an accused

18. Illi ssir referenza wkoll ghall-kaz fl-ismijiet Ninn-Hansen vs Denmark fejn il-Qorti Ewropea tad-Drittijiet tal-Bniedem b'referenza rigward *trial by media* qalet hekk:

In this way it risks having an impact on the impartiality of the court under Article 6 § 1 as well as the presumption of innocence enshrined in Article 6 § 2

19. Illi finalment il-Protestant jaghmel referenza ghall-kaz tal-Qorti Ewropea ta' Strasburgu fl-ismijiet **Arrigo & Vella vs. Malta** fejn intqal hekk:

The Court recalls that this provision cannot prevent the authorities from informing the public about criminal investigations in progress (Allenet de Ribemont v. France, judgment of 10 February 1995, Series A no. 308, p. 17, § 38). Moreover, the Court considers that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought, as in the present case, against two high-ranked magistrates (see, mutatis mutandis, Craxi v. Italy, no. 34896/97, § 103, 5 December 2002). The fact that the applicants had important duties in the national judicial system at the time of the alleged offence required the highest State officials, including the Prime Minister, to keep the public informed of the alleged offence and the ensuing criminal proceedings (see, mutatis mutandis, Butkevičius v. Lithuania, no. 48297/99, § 50, ECHR 2002-II). Otherwise, the gravity of the accusations could have undermined the confidence which the courts in a democratic society must inspire in the public.

However, respect for the presumption of innocence requires that the authorities use all the necessary discretion and circumspection (see Allenet de Ribemont, judgment quoted above, ibidem). Article 6 § 2 will be violated if a statement of a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved so according to law. It suffices, even in the absence of any formal finding, that there is some reasoning to suggest that the official regards the accused as guilty. In this respect, the Court has emphasised the importance of the choice of words by public officials in their statements to the press before a person has been tried and found guilty of an offence (Daktaras v. Lithuania, no. 42095/98, §§ 41 and 44, ECHR 2000-X, and Butkevičius v. Lithuania, judgment quoted above, §§ 49-50).

Ghaldaqstant l-protestant filwaqt li jaghmel referenza ghall-Artikolu 39 tal-Kostituzzjoni ta' Malta, l-Artikolu 6 tal-Konvenzjoni Ewropea u d-disposizzjonijiet rilevanti tal-Kodici Kriminali, filwaqt li jgib l-premess a formali konjizzjoni tal-protestat u jzomm lill-istess protestat responsabbli ghad-danni, in vista tal-premess u stante li qed jirriserva li jistitwixxi proceduri ulterjuri sabiex jigu determinati l-konsegwenzi ta'

tali ksur fuq l-ezitu finali tal-proceduri kriminali ghalhekk qieghed *jpoggi lil protestat in mora, culpa et dolo ghall-finijiet u effetti kollha tal-ligi.*

Av. Dott. Franco Debono LL.D.
Franco Debono & Associates
1, Strait Street, Valletta

Av. Dott. Amadeus Cachia LL.D.