INSTITUT JONATHAS

POUR ÉVITER QUE LE PASSÉ SOIT NOTRE FUTUR

Press release: When justice retreats in the face of an explicit call to murder or How *Non Bis in Idem* becomes a shield for the State's renunciation

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On Friday 2 January, the Ghent Chamber of Council declared the criminal proceedings brought against writer Herman Brusselmans inadmissible, on the basis of the principle of *non bis in idem*, according to which no one may be tried or punished twice for the same acts. At this stage, **this decision is not final, as it remains subject to appeal**, and it follows a long and complex procedure.

By way of reminder, following the publication by the weekly Humo of statements by the Flemish author Herman Brusselmans — "(…) I feel like driving a sharp knife into the throat of every Jew I meet" — the Jonathas Institute, the Coordination Committee of Jewish Organisations of Belgium (CCOJB), the Forum of Jewish Organisations (FJO) and the CCLJ joined the proceedings as civil parties against Herman Brusselmans before the investigating judge attached to the Ghent criminal court for incitement to hatred and violence and threats of an attack against persons.

Last year, the Chamber of Council had postponed its decision on a possible referral to the criminal court, considering that additional investigative measures were necessary. At the end of this phase, however, it did not examine the substance of the facts, holding that the public prosecution had lapsed due to a previous criminal decision concerning the same facts, brought by other civil parties, which had become final.

A fundamental principle, but a questionable application

Non bis in idem is a fundamental principle of the rule of law, intended to protect individuals against judicial harassment. It was never designed to serve as a shield for the inaction or disengagement of the public prosecution service.

In this case, the final nature of the criminal decision rests exclusively on a choice made by the prosecution: not to lodge an appeal against an earlier judgment, after having itself sought an acquittal.

By acting in this way, the State withdrew from the criminal arena and then invoked that withdrawal to prevent any subsequent judicial debate on statements explicitly calling for violence against a group of citizens. The principle intended to prevent judicial harassment is thus used in an attempt to paralyse any effective prosecution.

This situation creates a troubling precedent. It means that when the prosecution renounces the full exercise of public action, victims are potentially deprived not only of a trial on the merits, but also of any possibility of having the seriousness of the facts examined by a court. The message sent is a heavy one: if the State remains silent, hate speech becomes legally untouchable. Yet history reminds us that renunciations presented as minor have never prevented more serious abuses, and that judicial inaction can make the judge complicit in violations of the law. Is the Brusselmans case really not worth a fight?

As Viviane Teitelbaum recalled before the court, on behalf of the civil parties (CCOJB, FJO, Jonathas Institute and CCLJ):
"*Many Jews have the feeling of being abandoned by the judicial system of their country, especially when a prosecutor himself seeks an acquittal and then the dismissal of the case. We have experienced the indifference of our justice towards Jews in other periods of history*."
And again:
"*The prosecution must ensure respect for the law and the protection of public order. In this case, it sought an acquittal. This attitude is incomprehensible to us. Unacceptable*."

A question of equality before the law
The issue touches upon equality of citizens before the law and the responsibility of the State in the face of hate speech. In other cases, the public prosecution pursues, argues, and lodges appeals. Here, when the statements explicitly target "the Jews" as such, the State withdraws and turns that withdrawal into a definitive procedural barrier.

At the hearing, the Secretary General of the Jonathas Institute deemed it essential to return to history:
"*In the 1920s, the German judicial system refused to consider antisemitism as a threat. When supposedly humorous articles and cartoons openly inciting hatred against Jews were published, the courts remained silent in the name of freedom of expression. Twenty years later, the judges at Nuremberg convicted Julius Streicher, even though he 'only had ink on his hands'. Yes, words always precede crimes*."

A democratic responsibility
Invoking *non bis in idem* under these conditions does not strengthen the rule of law. It undermines its credibility. For a democracy is not measured solely by the protection it affords to defendants, but also by the ability of its institutions not to renounce their role when it comes to protecting citizens who are victims of hatred and violence. It is precisely when the judge fully assumes his or her judicial mission that justice fulfils its purpose: restoring social peace, enabling coexistence, by applying the law.

As Viviane Teitelbaum stated at the hearing:
"*I am not speaking here as a jurist, but as a citizen and as a representative of a community that feels threatened. An acquittal does not erase the impact of such words. For us, the wound remains*."