Hupe, Katharina. "Defamation Trials in Belgium – The Case of Herman Brusselmans's Novel *Uitgeverij Guggenheimer*." *Literary Trials: and Theories of Literature in Court*. Ed. Ralf Grüttemeier. New York: Bloomsbury Academic, 2016. 159–174. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781501303203.ch-009>>.

Downloaded from Bloomsbury Collections, www.bloomsburycollections.com, 26 April 2023, 14:43 UTC.

Copyright © Ralf Grüttemeier and Contributors 2016. Released under a CC BY-NC-ND licence (<https://creativecommons.org/licenses/by-nc-nd/3.0/>). You may share this work for non-commercial purposes only, provided you give attribution to the copyright holder and the publisher, and provide a link to the Creative Commons licence.

Defamation Trials in Belgium – The Case of Herman Brusselmans's Novel *Uitgeverij Guggenheimer*

Katharina Hupe

In December 2000, the Belgian author Herman Brusselmans was ordered by an Antwerp Court (*Rechtbank van Eerste Aanleg*) to pay damages to the sum of 100,000 Belgian Francs (about 3,000 US dollars) for defamation of the renowned Belgian fashion designer Ann Demeulemeester through his novel *Uitgeverij Guggenheimer* (Publisher Guggenheimer). This verdict brought to an end legal proceedings that had started more than one year previously when Demeulemeester successfully applied for a preliminary injunction banning the novel by the Appeal Court of Antwerp (*Hof van Beroep van Antwerpen*).

The novel had been published on 17 September 1999, constituting the third volume of a series about the fictitious media tycoon Guggenheimer. In the first two volumes – *De Terugkeer van Bonanza* (The Return of Bonanza, 1995) and *Guggenheimer wast witter* (Guggenheimer Washes Whiter, 1996) – Guggenheimer had already gained fabulous wealth in the movie and advertising business, respectively. In the third volume he decides to enter into the publishing business with the declared objective to establish the most successful publishing house in Belgium and to fill the first three places of the bestseller list with books from his own house. To this end, he starts with quite drastically getting the most successful writers of rival publishers out of his way: Hugo Claus, Monika van Paemel and Jef Geeraerts – all names used in the novel are identical with those of the most prominent writers of the time in Flanders – followed by promoting his own writers in very unorthodox ways. In no time, Guggenheimer manages to found the most successful publisher in Belgium. Along the way, he has enough time for sex with all the women he desires, as all women desire Guggenheimer – among them beautiful young Belgian VIPs

who share the names of real Belgian celebrities such as Katia Alens, Joyce de Troch and Sabine de Vos.

Likewise the plaintiff, Ann Demeulemeester, is called by her real name in the novel four times. Two of the relevant passages led to the claim. In the first one, Guggenheimer derogatorily talks about Ann Demeulemeester with his driver and casual killer Jules:

The bitch that has fitted these rags with cut and seam, she should be executed by firing squad. What's her name again? Damn, her name slips my mind, how is that possible, I was in bed with that chick someday. Such a dwarf gnome with frog eyes and hairs from her twat to her back. I would call her name a thousand times if I wouldn't have forgotten it. Hold on a minute, I remember! Ann Demeulemeester! Yes, indeed.... Of course, buddy. Brown stripes. And her tongue full of holes from swallowing needles by accident when edging and sewing the hems. That's not good for giving blowjobs, I can assure to you. Gee, this Ann Demeulemeester. (Brusselmans 1999: 42)¹

A similar combination of disdain for Demeulemeester's professional qualities and her physical and sexual attractiveness also characterizes the second incriminated passage in which Guggenheimer, after having had sex with the ex-Miss Belgium Ilse de Meulemeester, wonders:

'So, so... Meulemeester... so, so,... Actually, are you related to this other bunch of bones, what's her name... Ann Demeulemeester? This skyrocketing fashion designer of coutureless black rags, for which chichi women pay usury prices without any valid reason? Is that your aunt, even if she looks like your uncle with a carnival wig? Or is she your sister?' 'Eh... no... we are not family.' 'Suppose you are right. You don't resemble her at all. Your tits are in front and Demeulemeester's tits are on the back. Now for something completely different. Do you read a lot?' (Brusselmans 1999: 54–5)

The fashion designer felt personally insulted through these passages and filed a lawsuit against Brusselmans. The fact that the established writer Brusselmans, who had launched his novel as a satire, was convicted in the end is remarkable, especially since literature seems to have been granted a relatively high degree of judicial protection in Belgium (compared to France or the Netherlands for example) since the end of the nineteenth century. The trials in 1900 against the famous writers Camille Lemonnier (the so-called 'Marshall' of Belgian literature) and Georges Eekhoud on grounds of violation of morality had both ended with an acquittal. Lemonnier had been prosecuted for his novel *L'Homme en amour*

(*Man in Love*, 1897) which contains realistic descriptions of the protagonist's sexual life. Eekhoud had taken issue with homosexuality in his novel *Escal-Vigor* (1900) as one of the first Belgian writers. Not only were they acquitted: Eekhoud and Lemonnier even were the last authors prosecuted at a Belgian Court for violation of morality in their literary writings (cf. Fredericq 1951: 85; De Zegher 1973: 7).

This borderline of institutional literary autonomy was in fact not crossed by several judicial obscenity proceedings at the end of the 1960s. For example, the well-known trial against Hugo Claus – mentioned above as one of the figures Guggenheimer had to get rid of – was not about his text *Masscheroen* but about staging three naked men (impersonating, by the way, the Holy Trinity) in a theatre performance. This trial ended with the confirmation by the highest Belgian Court (*Hof van Cassatie*) of a four-month prison sentence for Claus on conditional discharge (Hupe and Grüttemeier 2014). In the same period, the novel *Gangreen I. Black Venus* by Jef Geeraerts was confiscated. Later, this measure turned out to be a mistake in the course of a proceeding against a dubious bookseller and Geeraerts's novel was quickly put back onto the shelves (cf. Grüttemeier 2013). Therefore, one can hold that concerning the offence of violation of morality, there have not been any trials incriminating literature for more than 100 years. From an institutional perspective, this indicates a relatively stable *exceptio artis* in the sense of a relative institutional autonomy (*sensu* Bourdieu) for literature in Belgium.

However, concluding from the Brusselmans case, one might wonder whether something has changed in recent years, at least concerning the offence of defamation, since this case was not the only one of its kind. Around the same time, literature was subjected to court proceedings when Dimitri Verhulst's mother felt offended by the description of an 'incredibly fat mother' in Verhulst's autobiographical debut novel *De kamer hiernaast* (1999, *The Room Next Door*) and filed – in this case: unsuccessfully – a lawsuit against her son (*Gazet van Antwerpen*, 28 August 1999).² Are these defamation trials an indication for a rollback concerning the degree of institutional autonomy of literature in Belgium? In what follows, the Brusselmans trial shall serve as a case study to answer this question, especially since it can be regarded as representative and since it is relatively well documented. More specifically, the degree of institutional autonomy acknowledged by judges and lawyers in relation to the Brusselmans case will be explored and to what extent different theories of literature had an impact on the proceedings.

The ban on the novel

Brusselmans's friend and fellow author Tom Lanoye found plain words concerning the action against Brusselmans: 'If the argument is that Ann Demeulemeester felt harmed commercially by the book, we cross a border. Then I could likewise take legal action against any negative review of my books' (*De Standaard*, 2 November 1999). Obviously, Lanoye supposed that Demeulemeester simply was afraid of negative publicity and initiated the proceedings against Brusselmans only for this reason. In addition, he suggests that legal action like that initiated by Demeulemeester would result in a flood of complaints and, implicitly, that the freedom of literature as such would be at stake.

Demeulemeester stated that she did not intend to restrict the right of artistic freedom (cf. Buelens e.a. 2000: 201). Nevertheless, she felt that her personal rights were violated in an unacceptable manner, since artistic freedom may not be used to violate the rights of third parties, regardless of the identity of that party: 'Imagine that a novel's author uses such a language for homosexual or coloured peoples, Jews or immigrants. Would the progressive Flanders in this case still talk about artistic freedom?' (*De Standaard*, 3 November 1999) One might wonder at this point whether the plaintiff actually had read the novel as a whole, as there is a large number of minorities in *Uitgeverij Guggenheimer* not exempted from the rants of the central character. For instance, Guggenheimer employs, mainly for purposes of his own sexual interest, an African servant girl forced to wear a mini-skirt during working hours and prohibited to wear underpants at any time (Brusselmans 1999: 16). Guggenheimer sends away two migrant children with the words 'Go away... to your... mother. She is baking camel. Shoo, away!' (236) and feels disgusted by a homosexual waiter: "Have you seen," said Guggenheimer, "what in God's name, what kind of gay he is? For bringing his mouth in such a form of glance, he must suck dicks more than daily. My blood freezes in my veins when I think about it" (81). And although the main character Guggenheimer is himself Jewish, this group is not spared either: 'If I was not a Jew myself, I could easily apply for the Gestapo. Or rather for the SS, because I do look enormously good in uniforms. SS member or Jew, the difference is small' (112). Against the background of these examples and other offensive comments in the novel, it seems not unlikely that other people would also have felt insulted by the tirades of the main character. However, apart from Demeulemeester, no other plaintiffs appeared, although the writer Monika van Paemel at least seems to have considered taking legal action (*De Morgen*, 2 November 1999).³

On 28 October 1999, two days prior to the commencement of the annual Antwerp Book Fair (*Boekenbeurs*), Ann Demeulemeester filed an application for a preliminary injunction to prohibit publication of *Uitgeverij Guggenheimer*. The very next day, the judges Snelders, Vanstraelen and Wouters formally granted the injunction and justified the necessity of the prohibition by referring to the upcoming book fair that would lead to a broad and very harmful distribution and publicity of the novel. Therefore, they prohibited the defendant Brusselmans, his publishing houses *Prometheus* and *Standaard Uitgeverij*, the wholesaler *Libridis* and the bookshop *Standaard* from distributing the novel in Belgium 'in today's shape, with the passages which are relevant for this lawsuit and which are related to the plaintiff'. In addition to the prohibition of sales, the judges imposed a fine of 10,000 Belgian Francs for each book that was still available on the Belgian market after the verdict (*HvBA* 1999a: 88).

In their reasoning for the injunction, the judges argued that this case required weighing up the right of free expression (Article 25 Belgian Constitution and Article 10 European Convention on Human Rights)⁴ claimed by Brusselmans and the right of privacy (Art. 22 Belgian Constitution and Art. 8 ECHR) of Demeulemeester. The relevant passages on pages 42 and 55 of the novel were, according to the judges, 'very... defamatory' with regard to the plaintiff and formed an offence against the plaintiff's privacy. Therefore, the right of free expression must be subordinated until a verdict was given in main proceedings (*HvBA* 1999a: 88). In other words: in a democratic society, the guaranteed right of free expression is not granted absolutely but, according to the judges, subject to necessary restrictions, such as the protection of the rights of others. In the present case, the judges decided that the right of expression has to give way to 'the protection of the private life of the plaintiff' (*HvBA* 1999a: 87).

After the publication ban not only the judgement but also the proceedings as such were sharply criticized by parts of the press. For example Dirk Voorhoof, professor at the Institute of Communication at the University of Gent, described the trial as a 'dangerous precedent' since the opponent party did not have the opportunity to defend its point of view. Furthermore, he criticized the fact that the judges 'did not have the time to read the book and to consider the passages in the context of the novel in question.' Further, according to Voorhoof, the prohibition of preventive censorship, which is legally established in the Belgian Constitution, had been disregarded (Voorhoof 1999: 10).

Another fundamental criticism of the verdict emphasized that the named characters in the novel were part of a fictional world and thus must not be

identified or considered as persons existing in reality. Eric Willems, director of the *Standaard* publisher at that time, stated: 'What is surprising is that this is about fiction. The world of the media is criticized, but no people are attacked. The characters are fictitious . . . . For us, it is about freedom of writing satire and thereby also about freedom of expression' (*De Morgen*, 2 November 1999). This quote reflects two classic arguments of modern literary defence strategies against lawsuits, especially when defamation is at stake. The first argument refers to the impossibility of identifying characters within fictional worlds with real existing individuals. From that perspective, the character Ann Demeulemeester in the novel does not refer to the real fashion designer and, consequently, the character Guggenheimer does not insult her, but a fictitious character with the same name within a fictional narrative world.⁵ The second argument emphasizes the specific genre of the text: satire. According to the publisher, it is usual for satirical texts to imply remarks that could be understood as an insult. But such an interpretation would mean misunderstanding the genre and its specific stylistic features. Seen from an institutional point of view, the publisher claimed an absolute institutional autonomy for insulting expressions in satirical literary texts – a postulation that goes far beyond the relative *exceptio artis* granted in the past.

This defence, by the way, was in line with the image of Brusselmans's texts created by criticism. Brusselmans, who is known as a writing maniac and who had already published twenty-six novels and stories prior to the publication of *Uitgeverij Guggenheimer*, is usually quoted in connection with his colleague Tom Lanoye – 'a versatile Flemish poet, playwright, and prose writer' with an 'undeniable talent as a polemicist and public performer'. Both are denoted as 'rebellious young Flemings' and 'angry young Belgians' whose narratives are harsh social critiques of Flemish reality, often using real names for their fictional characters (cf. Brems 2006: 431, 548; Hermans 2009: 651). But at this point, this was only the literary perspective which was not the one of the judges.

Appeal against the injunction

Following the issue of the ban, Brusselmans and his lawyer immediately appealed against the injunction so the proceedings continued at the Antwerp *Hof van Beroep* (Appeal Court) on 4 November 1999. In this trial, the same judges who had decided on the preliminary injunction were appointed again, and based

their considerations on the same premises: the conflict between the freedom of expression and Demeulemeester's right of privacy. To begin with, they stated that Demeulemeester would have 'an indisputable right of protection of her privacy' (guaranteed by Art. 22 of the Belgian Constitution and Art. 8 ECHR). On the other side was Brusselmans's right of expression. But the latter right was 'bound to specific formalities, conditions and sanctions which are necessary in a democratic society, *inter alia* to protect the good name and the rights of others' (HvBA 1999b: 91). Against this background, the judges concluded that an 'unscrupulous defamation of people's privacy and their own person... must not be tolerated' (HvBA 1999b: 89).

In making their balance, the judges explicitly recognized that they were dealing with a novel that displays 'literary forms' and, for that reason, could be classified as a literary work. However, the judges declared the 'literary forms' of the novel as 'irrelevant... in this specific case, considering the fact that the party Demeulemeester is not a fictitious but an existing person who is named with her full personal and professional identity' (HvBA 1999b: 91). The main issue identified by the court was that Brusselmans had not taken any steps to alienate the character and separate it from the identity of the real person. This argumentation suggests that the court's judgement might have been different if the persons were less recognizable. According to the judges, people who exist in reality and appear in fictional texts do not automatically become fictive persons – an argument that is not restricted to legal professionals but also can be found in literary scholarship (Seiler 1983: 206–59). The judges corroborated their view with the argument that Brusselmans himself had declared in interviews that 'everything he wrote about the party Demeulemeester is true' (HvBA 1999b: 91).

Against this background, the judges assessed the incriminated passages as 'strongly insulting, offending, scathing and absolutely derogatory towards the person... Demeulemeester' (HvBA 1999b: 91). They left no room for doubt that the incriminated passages were not protected by freedom of expression: 'the question can be posed if an author has the right to publicly... violate the personal integrity and privacy of an individual... under the pretext of freedom of expression'. Such violations, '*prima facie* exceed the borderline of what is socially tolerable'. However, the confirmation of the injunction by the judges was explicitly declared as provisional 'in expectation of a judgement in the main proceedings' (HvBA 1999b: 91). As a result, the novel remained banned in Belgium for the time being.

Van Overloop and Beeusaert, Demeulemeester's lawyers, expressed their satisfaction with regard to the verdict: 'this is a balancing of interests. One may be in favour of freedom of expression, but at the same time not in favour of letting a bulldozer steamroll oneself' (*De Standaard*, 6 November 1999). Not surprisingly, Brusselmans's lawyer Eric van der Mussele criticized the verdict and did so with heavy fire. According to him, a literary genre such as the polemic of satire was obviously no longer allowed in Flanders: 'Polemic exists since the Middle Ages. However, the truth does not play any role in it.... Polemic is the artistic form by which my client expresses himself' (*De Standaard*, 6 November 1999). He stated, just as Brusselmans's publisher after the injunction, that what may be misunderstood as insults were for someone with knowledge of literary traditions a specific feature of the genre. In sum, the lawyer criticized that neither the context nor the literary character of the text had sufficiently been considered by the court.

Likewise, Brusselmans criticized this fact after the trial. He called the publication ban a 'dangerous precedent' and pointed out that the novel belongs to a genre of fiction: 'It's about literature. About fiction' (*De Nieuwe Gazet*, 5 November 1999). Accordingly, literature could not be compared with reality at all, and hence, literature could not violate existing laws. On the basis of that point of view, Brusselmans and his lawyer implicitly advocate an absolute kind of freedom of expression as they obviously do not consider literature as justiciable – and consequently, no balancing of rights is needed.

A number of artists supported Brusselmans, especially his friend Tom Lanoye, who initiated the petition 'Citizens against censorship' and collected signatures at the Antwerp Book Fair. Among them were famous Belgian and Dutch authors, for example Gerrit Komrij, Remco Campert, Bart Moeyaert and Hafid Bouazza. Even two celebrities who had been referred to by their real names in *Uitgeverij Guggenheimer*, Sabine de Vos and Joyce de Troch, signed the petition and were opposed to the verdict, which they considered a 'serious restriction of the freedom of expression', according to the petition's text (*De Standaard*, 9 November 1999). Generally speaking, many artists presented the verdict to be a threat to artistic freedom.

But even though the publication ban partly caused strong criticism in literary circles, at the same time doubts were expressed about the purely artistic intentions of the author. For example, Fernand Auwera assumed that Brusselmans's intention by using names of famous people was to 'cause a scandal in his own interest because this stimulates the sales of the book'. In addition to these financial interests, Brusselmans was also assumed to have had a personal

interest in the use of the name of Ann Demeulemeester. Jef Rademakers held that the only reason why Demeulemeester appeared in the novel was that she had rejected a job application filed by Brusselmans's girlfriend at the time, Tania de Metsenaere. Rademakers assessed the use of Demeulemeester's name as 'very poor revenge' (*De Standaard*, 6/7 November 1999). Actually Brusselmans himself had admitted this private connection some days later in an interview:

I write while the TV is on, and if I need a host in my book, I simply choose the host who is by chance on the screen. It was the same with Demeulemeester: I was working on around page 40 of *Uitgeverij Guggenheimer* when the news came in that Tania did not get the job. Perhaps this is the reason why I mentioned Ann Demeulemeester. That's just the way it is, chance often plays a role in such things. (*Humo*, 9 November 1999)

Also the aforementioned Hugo Claus had expressed doubts on the pure artistic intention of Brusselmans. Claus – who was also a character in *Uitgeverij Guggenheimer* in which he was brutally beaten up to eliminate him as a competitor of Guggenheimer's publishing house, resulting in Claus's subsequent death in hospital – turned against the ban of the novel. But this did not imply a positive attitude towards Brusselmans's novel: 'To ban books does not make sense. It is stupid and may not be done. But do I thus have to show solidarity with Brusselmans? What Brusselmans has done is easy and idiotic. It cannot be justified' (*De Standaard*, 8 November 1999).

The reactions to the verdicts show that all literary parties, including Brusselmans's lawyer, agreed that literature should not be banned. From a literary institutional perspective, the major part of the protest came down to a plea for an absolute freedom of literature and satire with regard to legal prosecution – an absolute *exceptio artis*. However, even in literary circles, doubts had been raised about the question if the specific book *Uitgeverij Guggenheimer* deserves such protection due to the possibly non-literary motives of the author when writing the incriminated passages (cf. *De Standaard*, 7/8 November 1999). As we will see, this point will play a major role in the main proceedings that still were to come at that moment.

Main proceedings

Some weeks before the main proceedings at the Local Court of Antwerp (*Rechtbank van Eerste Aanleg*), Brusselmans did not sound too optimistic: 'I have a fifty percent chance. If I lose the case, I will leave it at that. In God's

name, what the fuck can I still do? But I hope that I will win. For myself. And for literature.' (*De Nieuwe Gazet*, 17 November 2000) The presiding judge I. Schoeters and the judges N. Verschuren and B. Bullynck had to decide on 21 December 2000 about the claim of the plaintiff Ann Demeulemeester who wanted to achieve a definitive ban on the novel *Uitgeverij Guggenheimer* as long as it included the passages she felt were insulting. In addition to the publication ban, Demeulemeester claimed a repeating prohibition so that Brusselmans would not be allowed to insult her in any future works. Each further violation should be levied with a fine of 20,000 Belgian Francs (RA 2000: 4). Furthermore, she asked, *inter alia*, for compensation to the sum of 100,000 Belgian Francs from Brusselmans for the damages suffered.

In dealing with this claim, the judges not only considered the formal conditions for the legal action as given – the public availability of the incriminated text – but also the insulting character of the incriminated expressions. This necessary condition for criminal liability was fulfilled since Brusselmans admitted the insulting character himself, as the judges argued: 'Brusselmans does not deny that the accusations with which he expresses a description of the plaintiff through his protagonist Guggenheimer, would be deeply violating and insulting to her. Brusselmans explicitly confesses the insulting nature of his accusations' (RA 2000: 7). By this, the judges referred to TV interviews with Brusselmans broadcasted on 31 October 1999 on *tv nieuws Canvas* and on 4 January 2000 on *Programma Spiegels Radio 5 Nederland* in which Brusselmans said regarding the legal action: 'It is about a... fictitious character Guggenheimer who says some unpleasant things about Ann Demeulemeester, which are by the way true.... I mean, she feels insulted, I can... understand it... well, but... the last thing you should do is that kind of thing [i.e. take legal action, K.H.]. That is robbery, you know?'

However, the 'insulting nature' of the incriminated passages was not enough for a conviction. As a further condition for the criminal liability of Brusselmans the judges brought the so-called moral part into play – what one might call with Fauconnet the subjective responsibility or the intent (cf. Sapiro, *infra*). The question was whether the defendant consciously, that means in full knowledge, wanted to insult. The judges considered this condition as fulfilled. They quoted Brusselmans, stating on 4 January 2000 on *Programma Spiegels Radio 5 Nederland* about the lawsuit: 'It is not that simple to insult somebody... to do it well, to do it, firstly, in a way that is beautiful to read and, secondly, to insult in a way that it really hurts.... It really must hurt, yes.' (RA 2000: 8)

The judges also referred to an article published in the Belgian weekly *Humo* on 25 April 2000 for their argumentation. In this article Brusselmans had stated: 'I like to insult people in my books. I am also good in blustering, insulting, parodying and polemicizing; it is a literary genre, which I like to practise with some intensity. I will not have lived if I did not hurt, both in reality as well as in writing' (RA 2000: 8). In the eyes of the judges, this was a substantial proof that Brusselmans indeed intended to insult Demeulmeester personally. On the other hand, the judges left no doubt that they saw *Uitgeverij Guggenheimer* as a novel and thus as a literary work. They even felt obliged to stress explicitly that 'a literary genre, like polemic or satire, is not a charter to commit a crime' (RA 2000: 8) – making explicitly clear that an absolute autonomy is not at stake in Belgium, but confirming at the same time implicitly that they are aware of the literariness of the incriminated text. But did they take this into account in their verdict?

At first sight, there are no indications for an *exceptio artis* in the weighing of private rights and the freedom of expression. The court saw a violation of Art. 448 as proven because 'the formulations used [are] strongly insulting and, according to the first defendant [Brusselmans], used with the intention of really hurting and insulting the plaintiff, it can thus be assumed that the plaintiff suffered a significant moral damage' (RA 2000: 9). The court convicted Brusselmans to pay 100,000 Belgian Francs to Demeulemeester, following the claim of her lawyers.

But there was also another side to the judgement. To start with, the court did not follow Demeulemeester's demand to prohibit Brusselmans from insulting her in any further publications because this would constitute 'a prohibited preventive measure', and such censorship would be in conflict with the constitutionally guaranteed freedom of expression (RA 2000: 10; De Prins 2001: 1454). While this part of the verdict is no reason to imply an *exceptio artis*, a third dimension of the verdict is at least worth some reflection from this perspective: the judges refused to continue the ban on the novel.

The court's main legal argument on this point is known in Belgian Law as 'cascading accountability' (*getrapte verantwoordelijkheid*, Art. 25 Belgian Constitution). Basically, this means that if the author of an incriminated text is known and if he lives in Belgium, he bears the sole responsibility so that the publisher and distributors of the text cannot be prosecuted. So firstly the author, then the publisher (in the case that the author is unknown or not living in Belgium) and, lastly, the distributor (in that case that the publisher is also

unknown or not resident in Belgian) are liable for the text. Thereby, complicity is not ruled out. But usually, only the author is prosecuted (cf. De Prins 2001: 1453; Delbecke 2012: 458).

In this case – and remarkable also for legal scholars (Voorhoof 2000: 4) – the judges turned the argument around. Since Brusselmans had transferred the rights on his novel completely to his publishers, they had to be acquitted because of the ‘gradual accountability’, and a publication ban could only be imposed on Brusselmans. This specific ban, however, would have very little effect in the given situation, the court held: ‘Considering the concrete information from the file, the Court supposes that no publication ban and thus no order to return from sale can be imposed in this case’ (RA 2000: 11).

What seems contradictory – an insult is judicially proven, but the convicted person is allowed to keep on earning money with his insult – is less so when it is placed into the context of a historically deeply rooted benevolence towards literature in the Belgian judiciary. From this perspective, gradual accountability seems to have been the legal instrument with which the judges could give way to the acknowledged fact that they were dealing here with a literary text from an established literary writer.

There is no explicit confirmation in the verdict for this relatively high degree of protection of literature, but the complementarity of this part of the verdict and the main target of societal criticism articulated concerning the injunction (Claus: ‘To ban books does not make sense. It is stupid and may not be done.’) is telling.

Furthermore, the reactions to the verdict point in the same direction. While Demeulemeester’s lawyer termed the verdict after the main proceedings ‘inconsistent’ because the judges had not prohibited the relevant passages (*De Standaard*, 22 December 2000), Brusselmans’s lawyer Eric van de Mussele expressed satisfaction: ‘The verdict is reasoned. The court is of the opinion that Demeulemeester really got insulted. But the claim, that the relevant passages should be deleted, did not make any sense. They had already been published in several newspapers’ (*De Standaard*, 22 December 2000).

The Belgian legal scholar Dirk Voorhoof, who had criticized the publication ban after the provisional injunction, also spoke about a ‘reasoned judgement’, because Brusselmans has liberated his insults from their context by himself. Thereby, the court did not even have to consider the novel’s literary context and the fact that the insults were spoken by a literary character (Voorhoof 2001: 4).

Conclusion

Looking over the Brusselmans trial, the conflict between the freedom of expression regarding literature – the *exceptio artis* – and the legal protection from insult, referred to by all the judges involved in the legal actions, can be described as a complex balancing act that shows no signs of a principled turn away from the relative *exceptio artis* in the Belgian judiciary.

First of all, the judges continue to consider literature as societally valuable and deserving a special legal protection, which in principle also applies for *Uitgeverij Guggenheimer*. On the other hand, the judges are not willing to accept insulting statements ‘under the cloak of freedom of expression’ or of art (*HvBA* 1999b: 91). In this case, they had doubts about the pure artistic intention of the author, to say the least (and not only the court had these doubts). However, that does not at all imply a rollback of the existing institutional autonomy of literature in general. That the high degree of protection for literature – literature’s relative autonomy within the judiciary, if you like – is still stable becomes clear from the fact that the judges lifted the publication ban after the main proceedings.

The same conclusion can be drawn from the controversial reactions to the legal proceedings. They can be divided into two levels. From an institutional point of view it can be seen that almost all Belgian artists protested against the proceedings in principle and that many artists considered the legal intervention a danger to their artistic autonomy. According to Bourdieu, the fierceness of these protests can be taken as an indication for a high degree of institutional autonomy of the literary field at that time: the stronger the protests, the higher the degree of institutional autonomy of a field (Bourdieu 1999: 349). In this case, the protests against the ban were indeed massive and widespread, as we have seen.

On a second, individual level, the reactions were more ambivalent and the support for Brusselmans was much lower. The same principled protesters against any threat to artistic freedom expressed doubts whether the poetics of Brusselmans in general and especially *Uitgeverij Guggenheimer* was what they wanted to fight for. Hugo Claus was already quoted as exemplary in that regard, but one might also refer to Dimitri Verhulst: ‘Of course, censorship is unacceptable... but the book by Brusselmans is an unfortunate occasion to hold a successful debate’ (*De Morgen*, 9 November 1999; Meuleman 2000: 83).

Concluding, there is no sign of a rollback of institutional autonomy for literature within the Belgian judiciary at the turn of the last century. This

autonomy basically seems solid over the whole twentieth century, leaving aside the times of occupation 1914–18 and 1940–45. However, while obscenity is no longer an opponent that can remind literature of the relativity of its autonomy, defamation is, at least for the time being. Still, the relatively small number of literary defamation trials and the generally careful handling of these cases by the courts structurally indicate mainly one thing from my perspective: a relatively high degree of institutional autonomy for literature in Belgium, independent from the form of accusation.

Notes

- 1 All translations are mine, except indicated otherwise.
- 2 For reasons of clarity of presentation, the articles from dailies and weeklies – often anonymous and with very similar titles – are not integrated in the references section. They are traceable by the reference to the name of the periodical and the date given after the quote.
- 3 There also has been a complaint of the television host and ex-Miss Belgium Lynn Wesenbeek (and her husband), which was apparently discontinued in the further course of the proceedings. Information about this legal action is rare (cf. *De Standaard*, 2 November 1999). After the trial in 1999, the former *Libelle*-editor Suzanne Mastbroek also accused Brusselmans, because he would have called her a ‘moronic bitch’ (cf. *De Standaard*, 5 October 2000; *Gazet van Antwerpen*, 5 October 2000), but without juridical consequences.
- 4 Artistic freedom in Belgium is not explicitly mentioned in Belgian law but is subsumed under the freedom of expression, as in a number of countries as the Netherlands, France or the US (Schmidt 2012: 195).
- 5 Consequently, this view implied that Brusselmans couldn’t be judged at all for statements within his fictional worlds. Georges Eekhoud used such an argument in the trial around his novel *Escal-Vigor* in 1900. There, he required that ‘the author is not responsible for the speech and actions, which he gives to his characters.’ In 1952, also the Dutch writer W.F. Hermans used this argument in his personal statement during his trial because of insulting passages in his novel *Ik heb altijd gelijk* (I am always right). Both claims did not have any juridical success (Beekman and Grüttemeier 2005: 101).

References

- Beekman, K. and R. Grüttemeier (2005), *De wet van de letter*, Amsterdam: Athenaeum – Polak & Van Gennep.
- Bourdieu, P. (1999), *Die Regeln der Kunst*, Frankfurt: Suhrkamp.
- Brems, H. (2006), *Altijd weer vogels die nesten beginnen*, Amsterdam: Bakker.
- Brusselmans, H. (1999), *Uitgeverij Guggenheimer*, Amsterdam: Prometheus.
- Buelens, G. e.a. (eds) (2000), *De militanten van de limiet. Over censuur en vrije meningsuiting*, Leuven: Uitgeverij van Halewyck.
- Delbecke, B. (2012), *De lange schaduw van de grondwetgever. Perswetgeving en persmisdrijven in België (1831–1914)*, Gent: Academia Press.
- Fredericq, S. (1951), 'L'art devant le droit pénal', *Journal des Tribunaux*, 82–5.
- Grüttemeier, R. (2013), 'De omgang van de rechtspraak met literatuur in België aan de hand van Jef Geeraerts' Black Venus', *Spiegel der Letteren* 55: 35–49.
- Hermans, T. (2009), *A Literary History of the Low Countries*, Rochester, NY: Camden House.
- Hupe, K. and R. Grüttemeier (2014), 'Vier maanden gevangenis voor de Drievuldigheid bloot. Hugo Claus' toneelstuk *Masscheroen*', in R. Honings, L. Jensen and O. van Marion (eds), *Schokkende boeken!*, 73–80, Hilversum: Uitgeverij Verloren.
- HvBA (1999a), Hof van beroep te Antwerpen, eerste kamer, 29 October 1999 (1999/EV/74), *Auteurs & Media* 1: 87–9. Available online: www.brusselmans.be (accessed 23 July 2014).
- HvBA (1999b), Hof van beroep te Antwerpen, eerste kamer, 4 November 1999 (1999/AR2890), *Auteurs & Media* 1: 89–92. Available online: www.brusselmans.be (accessed 23 July 2014).
- Meuleman, B. (2000), 'De zelfkruisiging der kunsten', in G. Buelens e.a. (eds), *De militanten van de limiet*, 77–83, Leuven: Uitgeverij van Halewyck.
- Prins, Dajo de (2001), 'De burgerlijke rechter en de persvrijheid', *Rechtskundig Weekblad* 39: 1445–56.
- RA (2000), Rechtbank van eerste aanleg te Antwerpen, 21 December 2000, De Meulemeester t/Brusselmans A.R. (1999/6.882/A), *Auteurs & Media* 1 (2000): 271–6. Available online: www.brusselmans.be/2000_12_21_Brusselmans.pdf (accessed 23 July 2014).
- Schmidt, C. (2012), *Rechtsnatur und Verpflichtungsdichte der Europäischen Grundrechte*. München: Herbert Utz Verlag.
- Seiler, B. W. (1983), *Die leidigen Tatsachen. Von den Grenzen der Wahrscheinlichkeit in der deutschen Literatur seit dem 18. Jahrhundert*, Stuttgart: Klett-Cotta.

Voorhoof, D. (1999), 'Brusselmans en de rechter', *De Standaard*, 2 November: 10.

Voorhoof, D. (2000), 'Wat na het verspreidingsverbod van „Uitgeverij Guggenheimer“?' *Samenleving en politiek* 7(4): 36–40.

Voorhoof, D. (2001), 'Vonnis Brusselmans beter dan boek', *Juristenkrant* 22: 4–5.

Zegher, J. de (1973), *Openbare Zedenschennis*, Gent: E. Story Scientia P.V.B.A.