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Carnival and the limits of freedom of expression

An analysis by Unia

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and the limits of freedom of expression

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2019

This document has been translated into English and was written originally in Dutch.

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Unia's responsibilities and the grounds for discrimination for which Unia has competence are described on our website: www.unia.be.

Anyone in Belgium who feels that he or she has been discriminated against can report this to Unia. One of our responsibilities is to counsel victims of discrimination and to inform them of their rights and obligations. We also provide information and practical tips.

Interfederal Centre for Equal Opportunities and Opposition to Racism

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Introduction

In Belgium, there is a deeply rooted tradition of carnival parades and other popular festivities. In the first couple of months of the year, carnival parades take to the streets in numerous cities and towns. Each year the festivities of the carnival season draw many participants and spectators to Blankenberge, Dendermonde, Diepenbeek, Herenthout, Lanaken, Leopoldsburg, Maaseik, Malmedy (the *Cwarmê*), Ninove and Stavelot (the *Laetare*) (to name just a few). The best known, and even world-renowned, events are the Aalst Carnival, which lasts for three days, and the carnival of Binche, with the iconic *Gilles* figures. In various Walloon cities, a festival (or *ducasse*) is held annually, as is the case in Ath and Deux-Acren (Lessines), for example. In Mons, the annual event is called the *Doudou*.

Carnival parades and other popular festivities are often characterised by their caustic mockery and ruthless satire. Carnival is equivalent to anarchy: all inhibitions appear to have been lifted and for several days, in a given location, anyone and anything can be the object of mockery. Carnival figures in *blackface*¹ or wearing SS uniforms or Ku Klux Klan robes show up here and there. The Catholic Church is laughed at, but so is the Islam. Public figures and politicians are fair game. In Aalst, on the day dedicated to the *Voil Jeanetten* ('Dirty Sissies'), thousands of men (and a few women) parade through the streets dressed in old (fur) coats, with lampshades on their heads, pushing baby carriages and carrying bird cages (with herring) and umbrellas. The carnival parades and popular festivities are usually rife with stereotypes (often) of minorities.

Each year, Unia receives reports related to the carnival parades and other popular festivities. On one hand, citizens are offended by the stereotypical, disrespectful depictions (often) of minorities and what they consider to be unacceptable behaviour. On the other hand, citizens do not understand why local traditions, with a long-standing history, are suddenly being questioned by "*others*" and have all at once become such a touchy subject for certain minorities. Needless to say that, with the emergence of mass communication – which has a rapid impact through traditional and other (social media) channels – the local character of carnival has to increasingly be put into perspective.

And though these traditions are time-honoured and often deeply rooted in the local community, this does not necessarily mean that they cannot change and evolve along with the rest of society. Local traditions, popular festivities, carnival parades ... are a reflection of the – often local – community and they evolve according with society, its norms, values and the importance attached to traditions, etc... For example, nowadays it would be unthinkable that, during the 'Kattenstoet' ('cat procession') in Leper, live cats would still be flung from the top of the Belfry tower, a tradition that in fact endured for centuries. Likewise, the 'gansrijden' ('goose riding') tradition no longer involves live geese.

As the same questions and concerns recur in reports made to Unia, Unia felt it would be useful to work out a text in which both the sociological-historical context of carnival and the legal (limits) of freedom of expression in Belgium could be elaborated. The aim is to approach the subject objectively, detached from the often highly inflamed emotions and intractable differences of opinion.

On the other hand, the direct cause for this text was the large number of reports that Unia received in March 2019 about the parade float belonging to "*De Vismooil'n*" that depicted anti-Semitic stereotypes. Therefore this brochure is centred around the discussion pertaining to the float of "*De Vismooil'n*", but the analysis that this entails – for example, about the use of stereotypes and the legal limits of freedom of expression – is absolutely applicable to other phenomena such as the figures in blackface, the wearing of SS uniforms or Ku Klux Klan robes, the satirical depictions of religious faiths and politicians...

¹ *Blackface* is a term from the United States that refers to a style of theatrical make-up in which a white person blackens his face in order to portray a caricature of an African-American slave.

In March 2019, Unia received some 35 reports about carnival, chiefly about the parade float of “*De Vismooil’n*”. This carnival group from Aalst chose *Sabbatical 2019 (Sabbatjaar 2019)* as their theme and the float that the group created included caricatures of Orthodox Jews. The anti-Semitic stereotypes used by “*De Vismooil’n*” led to a flood of reactions, from organisations and private individuals both from Belgium and abroad, as well as from official authorities.

Members of the Jewish community pointed out that “the caricatures such as those published in *Der Stürmer* of Jews with a hooked nose and chests full of money are typical of Nazism in 1939” and “carnival or not, there is no place for this in 2019 in a democratic country such as Belgium.”² The Jewish community referred to photographs showing similar *parade floats in Nazi Germany and highlighted the resurgent anti-Semitism in society.*³ The carnival associations emphasised the context of carnival “in which one is free to make fun of anyone and anything.”⁴ The members of “*De Vismooil’n*” explained how the float had come about: “Inspired by the notion of the sabbatical [translator’s note: ‘sabbatjaar’ in Flemish emphasises the root word Sabbath], we came up with the idea to feature Jews on our float. Not in order to make

*fun of the religion, but carnival just happens to be a festival of caricatures. We thought it was comical to appear in the parade as pink Jews with a money chest containing all the money we saved. Other religions are also the butt of jokes.”*⁵ A spokesperson of the European Commission stated that it was unthinkable that, seventy years after the Holocaust, such imagery could be paraded in European streets.⁶ UNESCO⁷ condemned the float with Jewish caricatures, referring to them as “racist and anti-Semitic depictions”⁸ questioned the status of Aalst Carnival as intangible cultural heritage.⁹ The spokesman for the European Commission, Margaritis Schinas, also sharply rebuked the float. The Simon Wiesenthal Center¹⁰ asked the Belgian government to publicly condemn the carnival group and threatened with the withdrawal of the diamond industry from Antwerp.¹¹

Whenever Unia receives a report concerning one of the discrimination grounds for which it is competent, and the person reporting expects concrete advice or some other form of intervention, Unia will open a case. The reports that Unia received about the *De Vismooil’n* parade float were gathered into one single, overall case.

² Press release: FJO en CCOJB leggen klacht neer tegen praalstoet ‘Sabbatjaar 2019’ op carnaval Aalst, www.fjo.be (4 March 2019).

³ Antisemitisch of carnavalesk?, www.standaard.be (6 March 2019) and Joodse praalwagens verdeelt: ‘Duidelijke grens overschreden’ of ‘lange tenen’?, www.demorgen.be (6 March 2019).

⁴ ‘Carnaval is lachen met alles wat kort en breed is’, www.standaard.be (11 March 2019).

⁵ Joodse gemeenschap legt klacht neer tegen Aalsterse carnavalsgroep: ‘Grens overschreden’, www.demorgen.be (4 March 2019).

⁶ European Commission on the float at the Aalst Carnival: ‘Ondenkbbaar dat dit nog te zien is in Europa’, www.standaard.be (5 March 2019) and Antisemitisch of carnavalesk?, www.standaard.be (6 March 2019).

⁷ UNESCO (United Nations Educational, Scientific and Cultural Organization) is a specialised agency of the United Nations focused on education, science and culture.

⁸ Aalst Carnival: Simon Wiesenthal Center dreigt met vertrek Antwerpse diamantindustrie, www.knack.be (6 March 2019) and Aalst Carnival dreigt te verdwijnen van UNESCO-lijst na Joodse klacht, www.demorgen.be (22 March 2019).

⁹ Aalst Carnival verdwijnt mogelijk van UNESCO-lijst, www.standaard.be (22 March 2019).

¹⁰ The Simon Wiesenthal Center is a Jewish human rights organisation (NGO) with headquarters in Los Angeles (USA).

¹¹ Joden woedend over Aalst Carnaval, ook UNESCO veroordeelt praalwagen, www.nieuws365.be (6 March 2019).

In many cases, Unia's role is to provide support and advice. Primarily, Unia strives to find an amicable solution. In cases of hate speech especially Unia will prioritize constructive dialogue whenever possible. Taking legal action is never Unia's first choice as a course of action and is generally considered a last resort, when, for example, the counterparty refuses to engage in dialogue or adopts an unreasonable position.

In the case of *"De Vismooil'n"*, Unia pointed out the *"clearly anti-Semitic character"* of the stereotypes used by the carnival group on their float.¹² According to Belgian law, however, the stereotypes are only punishable when used with the malicious intent of inciting (encouraging) others to discrimination, segregation, hatred or violence (see below: incitement offence). According to Unia, that was not the case for the float of *"De Vismooil'n"*.¹³ That is why, from the start, Unia called for dialogue, since *"interaction leads to mutual understanding."*¹⁴



The parade float of *"De Vismooil'n"*.

"Taking the clichés and stereotypes out of context allows them to be misconstrued. They can also hurt people. That is why Unia calls for dialogue. A carnival such as the one in Aalst is all about biting irony, self-mockery, and satire as forms of social criticism. Stereotypes, clichés, amplifications and generalisations are part of this. On the other hand, stereotypes and generalisations are hurtful. That is why Unia would like to invite the different parties to sit down together. 'A personal meeting leads to mutual understanding and that is particularly valuable,' according to Unia."¹⁵

In the days following Aalst Carnival, Unia contacted representatives of Jewish organisations as well as the carnival groups in order to organise a gathering. This resulted in a meeting between a representative of a Jewish organisation, representatives of the non-profit organisation 'Carnavallist tot in de Kist' [translator's note: roughly, 'Carnavallist until Death'] that defends the interests of the officially registered carnival groups, specifically, representatives of the group *"De Vismooil'n"* and the senior staff of Unia. During this meeting, which was held at the Unia offices, the various parties were able to directly express their concerns and sensitivities to one another and Unia was able to provide more details about the legal framework. Members of the carnival group *"De Vismooil'n"* and their families later also visited the Kazerne Dossin in Mechelen and remained in contact with the chairwoman of the *Forum of Jewish Organisations*. Finally, after the summer holiday, Unia organised a broader meeting in Aalst with the various actors (specifically, representatives of the officially registered carnival groups, representatives of various Jewish organisations and the mayor of Aalst). During this meeting a visit was made to the carnival museum of Aalst, the content of this report was explained and the people involved had the opportunity to exchange ideas with each other once again. Talking to each other does not guarantee that stereotypes will never reappear during Aalst Carnival. Nevertheless, according to Unia it is extremely positive that people stay on talking terms. In this way, a solution can be found that is not only structural, but that is also acceptable to all parties involved.

¹² P. BRENER, "Carnaval d'Alost : pourquoi la condamnation n'est-elle pas unanime", Regards April 2019, 9.

¹³ Unia pleit carnavalsgroep uit Aalst vrij, www.standaard.be (9 March 2019).

¹⁴ Unia pleit voor dialoog na klacht over Aalsterse praalwagen, www.standaard.be (5 March 2019).

¹⁵ Press release: Aalst and Melle: Unia pleit voor dialoog, www.unia.be (5 March 2019).

1 Reports to Unia about carnival

The reports that Unia received in 2019 about carnival chiefly pertained to the float of the carnival group “De Vismooil’n” that paraded through the streets of Aalst on 3 March 2019. This was not the first time that Unia had received reports related to carnival festivities.

1.1 Reports about the float of “De Vismooil’n”



Recycled head of a crusader.

The carnival group “De Vismooil’n” had planned a sabbatical year in 2019. A sabbatical year is a year in which a carnival group will save up its money in order to reinforce the group’s financial position. In order to save money, the carnival group had recycled figures from previous floats. Thus, for example, the head of a Crusader – a caricature of Michel Van den Brempt (an Aalst politician from the far right Vlaams Belang party) – was transformed into a caricature of an Orthodox Jew. The figures on the float of “De Vismooil’n” were dressed in pink and other items were depicted, including a money chest – surrounded by mice¹⁶ – which they claimed contained the money that they had saved. As such a highly stereotypical and clichéd image was created of the (orthodox) Jewish community. The float was thus instantly associated with the anti-Semitic stereotypes that the Nazis used in their propaganda.

The reports¹⁷ received by Unia about the float of “De Vismooil’n” fell into three categories: some criticised the float, others defended it, and a number of the reports were more general.

¹⁶ The Jewish community - and others - interpreted this as depicting rats, but according to “De Vismooil’n” the intention was to depict mice. On the website of Aalst Carnaval (www.aalstcarnaval.be), the “De Vismooil’n” group presented itself as follows: “Kom toidens de stoet allemool isj koiken nor ons kloizekes, ten zieje meschieng ons moizekes die sporen vèr noste joor” (“[rhyming] At the parade, come see our money chests, and you might even see our mice, who are saving up for next year”). There was also a reference to mice in the song that was sung by “De Vismooil’n”: “Valt het deurken van ons kluis, dan ziede gij ons muis.” (When the door to our money chest closes, you’ll see our mouse* [translator’s note: ‘mouse’ can be slang for female genitalia])

¹⁷ Unia received reports about Aalst Carnaval in Dutch, French and English. The reports were translated by Unia for use in this document.

1.1.1 Reports in which the parade float of “De Vismooil’n” was criticised

A number of reports that reached Unia strongly criticised the presence of the float of “De Vismooil’n” at Aalst Carnival.



Magazine Der Stürmer

Some of the notifiers claimed the float of “De Vismooil’n” evoked memories of **the iconography used in Nazi Germany in the 1930s**, more specifically, the iconography used in the magazine *Der Stürmer*.

“We are deeply upset by this parade float at the Carnival of Aalst on 3 March 2019. The caricatures such as those in Der Stürmer of Jews with a hooked nose and chests of money are typical of Nazism in 1939 and carnival or not, this has no place in a democratic country like Belgium in 2019. The Jewish community naturally accepts humour, this is very important in a society, but there are lines that cannot be crossed. The Jewish community has suffered the real-life consequences of the caricatures of Der Stürmer in WWII.”

Other people reporting to Unia pointed out that the float “reproduced a stereotype that expresses genuine anti-Semitism”, i.e. the **association of the Jewish community with money**. It was considered unacceptable for a city government to allow such floats.

“One can only be shocked, and even feel disgust, at the sight of such floats in a carnival parade that depict a grotesque image of the Jews. This might be due to a lack of historical awareness, but it could also be a sign of racial hatred. Carnival should not serve as a pretext for presenting such a caricatural image of certain population groups. What a regrettable image is given to survivors and their families, but also more generally to children who are watching such a spectacle.”

“On YouTube you can currently see an anti-Semitic float from a parade that recently took place in Belgium. That the parade was allowed is shocking. It encourages racial hatred. Such behaviour cannot be tolerated in a culture that recognises the human rights of every individual. What thoughts went through the minds of any of the Jewish children who watched the procession? Or of a child who is already aware of the Holocaust? This is cruel and despotic. Children must be protected against such traumatic events. This should never have happened. The people who supported or participated in the event need help and education.”

Some reporting parties felt that such a float should be **prohibited** before racism and anti-Semitism increase any further.

“This is about gross and intolerable trivialisation of the Nazi crimes and that should be prohibited on principle. I have learned too much about Nazism to know that it should not be given a chance. If carnival is a place for freedom of expression, then one should not forget that one can only claim this freedom of expression within the limits of Article 10, paragraph 2 of the European Convention on Human Rights: ‘The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the

disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.' Let us not forget that the malicious representations that the Nazis made of the Jews led to crimes. Such representations are also harmful to the health of the targeted group, as they are an attack on the well-being of these people. Public morality is also seriously damaged by such humiliating representations and this seriously damages the reputation of others. Nor can one ignore Article 17 of the ECHR which prohibits the abuse of rights."

"I will not dwell on the anti-Semitic character of the float. During the Nazi era, anti-Semitism plunged us into Europe's darkest hours. The number of anti-Semitic acts is strongly on the rise in Belgium and elsewhere and it is your responsibility to condemn them more vigorously. Unless I am mistaken, this is a step that you unfortunately did not dare to take and I deeply regret that. In any case, establishing a dialogue between different communities, organisations, governments and political leaders... is certainly always a constructive approach that can be very positive."

It was also judged that the **limits of free expression** were exceeded.

"Regarding the incident during Aalst Carnival, Unia stated last Tuesday that carnival is "pre-eminently a place for self-mockery, satire and social criticism. That makes it impossible to avoid stereotypes, clichés and generalisations. It is a time when the roles are reversed and the standards are not respected." But naturally stereotypes and generalisations can be offensive, says Unia. Unia proposes to establish a dialogue between the various parties (...). I would like to ask you how the use of the worst stereotypes would constitute a "reversal of roles". On the contrary, those in power remain those in power who can afford to cut down on those who are the subject of discrimination and/or violence in real society. Carnival means that the people can laugh at the King, but the King who laughs at the people is simply another form of violence. According to your logic, a gallery displaying anti-Semitic (or negrophobic, homophobic ...) cartoons would simply be fulfilling its role in the name of "culture". Personally, I am not in favour of prohibitions or judicial convictions, but I feel that a strong stance against this type of representation, which reinforces the worst stereotypes, in a period when we notice that the damage they cause is on the rise, should be the minimum response."

1.1.2 Reports in which the parade float of "De Vismooil'n" was defended

In a number of reports that Unia received, the presence of the float of "De Vismooil'n" was in fact defended.

Unia and Europe should *not* get involved in this debate, some said, because the float falls under **freedom of expression**.

"Our society is increasingly awash with so-called 'political correctness', overflowing with the weak, conformist discourse that is spewed over our regions and democracy and serves only to reduce it to a shapeless mass, which leads directly to a 'Brave New World'. "Freedom of speech" is still one of the basic principles of our democracy, and must never be restricted. The criterion "offensive" is not an objective criterion and will therefore be interpreted differently by everyone. Carnival is pre-eminently the moment when "by definition", folly can and must prevail, so that every image, representation, drawing, writing, song, ... can never be taken seriously. And by deduction can therefore never be hurtful to someone; perhaps ridiculous and/or disgusting, but not offensive."

It was stated that the Aalst Carnival phenomenon **cannot be properly understood** by people who do not come from Aalst.

“The parade in Aalst is not well understood by non-Aalst residents. Should the city ask for admission fees next year, or keep non-Aalst residents out? That problem with the Jewish population is a non-problem and should be refuted by you. Anyone who is portrayed in any way could then file a complaint. How ludicrous.”

Some reporting parties were even outraged that the float was **labelled as anti-Semitic**. One person’s opinion was that the matter had been gravely exaggerated by the Jewish community and the media.

“I would like to file a complaint with regard to the European Commission's reaction to the much-discussed float in the Aalst carnival parade. Their reaction narrowly stated that portraying people of Jewish origin (I use your wording) in the satirical and clichéd manner as in the parade was unacceptable and should be punished. The Commission is of course free to their opinions about satire, but the problem I have is that it was only pertaining to this float. Other religions were portrayed in the same manner in this parade, naturally each with their own stereotypes. The double standard here is to me an expression of discrimination based on religion and origin. The rights of certain religions are defended more strongly (even granting them different rights) solely based on their origin and religion.”

1.1.3 Reports of a more general nature

A few people who filed a report expressed themselves in more general terms.

For example, some people felt that **far too much emphasis** was placed on the float with a caricatural representation of Jews and that no attention was paid to other floats that were just as controversial.

“On FB I saw a video about the carnival in Aalst. It is not this video that is problematic, but the costumes and attitudes of certain participants (KKK, “negroes”) and of certain floats (Jewish caricatures).”

“I recently looked at the images of the carnival parades in Aalst and was deeply shocked by the costumes of the members of Forza Ninove, who openly referred to the racist KKK group (extreme right-wing movement that in the US were responsible for various lynchings of black people, among other things). The Jewish population was also mocked during this parade. They too were shocked but will receive/have already received apologies, and rightly so. I would like to see this happen for the black population as well. I would like to send a signal that we too are being taken seriously. I think many of us would appreciate it.”

It was noted that it concerns playful performances that are supposed to make people smile. Submitting a complaint therefore only leads to more **polarisation** in society.

The assessment was made that we live in a society where it is no longer okay to make fun of everything, not even during carnival.

"As a citizen of Aalst, I am astonished to find that the freedom of expression is in a bad state in Western Europe and Belgium in terms of the right to humor and satire. Time and again various interest groups and organizations such as UNESCO are abusing their power to restrain freedom of expression and, in particular, to target white Western culture and to label traditions such as carnival and 'Zwarte Piet' as racist. As a gay man and inhabitant of Aalst, I noticed two carnival floats that playfully depicted gay men and in which half-naked men in pink panties danced in an effeminate way. Just like the Jews, during the Second World War, gay people were killed by the Nazis in concentration camps and persecuted. Nevertheless, I do not feel personally attacked, stigmatized or offended, it actually brought a smile to my face."

Finally, we received a report that all the polemics, which should not have existed in the first place, had created a **horrible atmosphere** in the city of Aalst.

"I just want to report that the commotion surrounding the carnival group "De Vismooil'n" continues in our city. An unhealthy climate is really emerging. Perhaps you have heard of the canary in the coalmine. I can no longer bear to see how people are drifting towards anti-Semitism, I don't want to look the other way. It is not a matter of mere innocent fun, it is turning to hatred."

1.2 Other reports

In 2019, Aalst Carnival also led to reports to Unia about carnival participants with so called **blackface make-up** and others wearing clothing resembling the outfits of the Ku Klux Klan.

"I would like to report that during the carnival in Aalst, people painted their faces black, which is generally known as "blackface". Some wore costumes that are reminiscent of the American Ku Klux Klan. Photos have been shared on social media such as Twitter. People were tagged in the photos and politicians attended the carnival."

One person pointed out that the day of the **"Voil Jeanetten"** injected a note of homophobia by having men walking around in Aalst **"disguised as women."**

"I am contacting you because I was very concerned about your reaction to the protests after the Aalst carnival and the float on which Jews were depicted with big noses and boxes full of money. Other "racist" caricatures were not much better. The "Voil Jeanette Procession" at the end, with men disguised as women, added a touch of homophobia (translation: "dirty sissies"). (...)"

In the past the carnival parade in **Aalst** has often caused (international) commotion as well. In **2005**, for example, a (written) protest was filed by the League of Arab States against the "racist carnival" in Aalst after Islamic suicide bombers were depicted and a model of a mosque was carried around. The then Flemish Minister for Urban Policy, Marino Keulen, stated in the Flemish Parliament: *"We have responded to this letter in a correct manner, without apologising."*¹⁸ *"We have replied to the ambassador that we cannot assess this situation. Moreover, it is characteristic of carnival that people are made fun of. You cannot prohibit that. Otherwise you might as well cancel carnival, and that is not our intention."*¹⁹

In **2013** once again international controversy occurred when the *"Eftepia"* carnival group from Aalst paraded in SS uniforms during the procession. The group was referring to the debate about *"Zwarte Piet"* (Black Peter, Saint-Nic's helper). The then Flemish minister of Culture, Joke Schauvliege, wrote a letter to UNESCO in the name of the Flemish government to contextualise the Nazi parody in Aalst (UNESCO had reacted indignantly to the Aalst parody): *"We have outlined the historical-cultural context of Aalst carnival to UNESCO and we regret that the perception has arisen that the participants wanted to spread an anti-Semitic message. We condemn all forms of anti-Semitism and racial hatred, but carnival is of course a period of grotesque mockery with stereotypical exaggerations. I work from the assumption that the participants are smart enough to judge for themselves whether or not they are crossing the line and whether or not they are hurting or discriminating people."*²⁰

A year later, in **2014**, the *"Eftepia"* carnival group placed a black Saint Martin, seated on a bag of OCMW (welfare) money, on a float pulled by white slaves. Unia, then still the Center for Equal Opportunities and Opposition to Racism, stated in a response that the float had to be viewed within the context and the spirit of the Aalst carnival. *"It is not up to us to censor. This is the nature of carnival, it has to be controversial sometimes. During carnival everyone can say and think what they please."*²¹

In 2019, Unia also received reports about **other carnival parades** and events. For example, about the carnival in Malmedy and about events like *Le Grand Feu* in Liernu. People reported being offended by characters such as the *"sauvage d'Afrique"* (African savage) and the *"sauvage d'Amérique"* (American savage) by people wearing outfits that closely resembled those of the Ku Klux Klan.

"Yesterday a colleague showed me some pictures of the carnival parade in Malmedy. There are various traditional characters such as the "sauvage d'Afrique" with his cris féroces (ferocious cries) and the "sauvage d'Amérique" with feathers and bow and arrow. My question is whether these things have already appeared on your radar? In my eyes they are not really acceptable, so I just wanted to point them out."

¹⁸ Topical question about a letter from the Arab League concerning the Aalst Carnival and the minister's response from Vera Van der Borgh and Karim Van Overmeire to minister Marino Keulen, plenary session of the Flemish Parliament 4 May 2005, topical questions 240 and 241 (2004-2005).

¹⁹ 'Carnaval in Aalst kwetst moslims', www.nieuwsblad.be (30 April 2005). The then mayor of Aalst, Anny De Maght, reacted in the daily Het Nieuwsblad as follows: "This is the very first time in the long history of Aalst Carnaval that we have experienced such a thing. This is ridiculous. During our Carnival, everyone and everything is mocked, from national and international politicians to even the Pope and the Royal family. No one has ever raised any objections because everyone knows that that's what Carnival is about. That's what makes our popular festival so unique, and that must be preserved. This complaint not only jeopardizes the entire concept behind the Carnival, but also the basic right of freedom of speech."

²⁰ Naziparodie: Schauvliege legt Aalst carnaval uit in brief aan UNESCO, www.knack.be (14 February 2013).

²¹ Carnavalsgroep zorgt jaar na SS'ers weer voor controverse, www.gva.be (27 February 2014).

"This poster promotes the "Grand feu de Liernu" of 9/3/19. The figure depicted on the poster intentionally recalls the figures and uniforms of the Ku Klux Klan. This is very, very, shocking, unworthy and even reprehensible as a glorification of racism or as incitement to racial hatred! Using the trivialized image of the Klan to promote a bonfire! I appreciate black humor, but there's nothing explicit about it that suggests humor. The Klan itself confirmed the superiority of the white race and killed and lynched blacks in the United States. There is a lot of historical information about the Klan that is accessible and potentially known to everyone. At the very least, this poster shows a lack of taste or misplaced irony. In the worst case, a trivialization of, or even incitement to, racial hatred. The posters should therefore be removed as quickly as possible and those behind them should be heard, questioned or even prosecuted. Apologies would be welcome. Whose bright idea was this? Who is responsible for it? Those responsible must be identified and they must account for themselves. Are we going to accept the trivialization of imagery of the KKK in Belgium in these times of anti-Semitism, racism, xenophobia, the rise of populism, etc.?"



Poster "Grand feu de Liernu"

For the occasion of carnival in Sint-Truiden a 'carnival beer' called "*Jeanet*" was launched. This too was reported to Unia.

"This is inappropriate, and as a homosexual, I feel targeted. The term is an insult to all LGBT people."



Carnival Aalst (Photo: Belga).



Carnival Aalst (Photos: Belga).



The so-called *blackfaces* have regularly stirred up controversy. In 2018, in **Deux-Acren** (Lessines), during the *Ducasse des Culants*, the procession of the "groupe des Nègres" (group of Blacks) was cancelled. This happened after protests from an association that sought to denounce the racist nature of the blackfaces. The organisation behind this carnival lodged a complaint against the association because, according to it, it was a harmless folkloric procession and not an expression of racism. In 2019, Deux-Acren (Lessines) replaced "*la sortie des nègres*" (the appearance of the blacks) with "*la sortie des diables*" (the appearance of the Devils).²²

In 2019, additional security measures were announced in **Ath**, on the occasion of the "*Ducasse d'Ath*", following the announcement of a protest against the procession of '*le sauvage d'Ath*'.²³ The "*Bruxelles Panthères*" collective sent a letter to UNESCO to cancel the inclusion of the "*Ducasse d'Ath*" in the list of intangible cultural heritage.²⁴ There were no significant incidents during the "*Ducasse d'Ath*" weekend in August 2019. The mayor of Ath had a conversation with the *Bruxelles Panthères*

collective in advance and had appealed for calm. On Sunday, '*le sauvage d'Ath*' handed over his chains to the mayor and thereby symbolically indicated that he was free.

In connection with the so-called *blackfaces*, the *Working Group of Experts on People of African Descent* also recommended that the Belgian government support and facilitate an open debate about the use of so-called *blackfaces*, racializing caricatures and racist representations of people of African descent.²⁵

²² Deux-Acren: le 'groupe des Nègres' ne sortira pas à la ducasse des Culants, par crainte de débordements, www.rtb.be (14 September 2018).

²³ Ducasse d'Ath: le personnage du sauvage est-il raciste?, www.dhnet.be (1 April 2019) and Ducasse d'Ath: le Sauvage doit-il renoncer à son visage noir?, www.notele.be (24 July 2019).

²⁴ Non, le Sauvage ne périra pas!, www.notele.be (13 August 2019).

²⁵ Recommendation 68 in Statement to the media by the United Working Group of Experts on People of African Descent, on the conclusion of its official visit to Belgium, 4-11 February 2019, www.ohchr.org (11 February 2019).

2 Sociological-historical analysis of carnival

The carnival phenomenon has a long history with various "precursors" and parallel traditions, all of which have certain similarities. What is the origin and meaning of carnival? Why are stereotypical representations of minority groups so often used during carnival?

2.1 Origin and significance of carnival

Not all historians and folk scholars agree about the exact **origin** of carnival. There is, however, one common element in the description of all these traditions: it is always a reversal ritual, in which the existing order is reversed and norms of proper behaviour are suspended for a short and specific period of time.

As early as in Prehistoric times festive rituals have been documented in which the entire society was turned upside down for a short period of time, all social roles were reversed and no work was done. Such festivals already existed in ancient Babylon; in Mesopotamia and Egypt; among the Greeks, the Romans and the Germanic tribes.

In the Europe of the Middle Ages, these traditions became incorporated into Christianity. The pre-existing traditions (after many attempts to suppress pagan practices) were given a place within the Christian liturgy. In the Middle Ages, there was the feast of Shrove Tuesday, in which people could celebrate boisterously one last time with a lot of food and drink and then, as of Ash Wednesday would begin the Roman Catholic fasting period of Lent in preparation for Easter. It is also from this period on that the word carnival, always within essentially the same context, begins to take shape. At the time carnival was characterised by disguises, processions, and the establishment of a 'mock hegemony' with its own hierarchy, as well as exuberant eating and drinking.

With the advent of the Reformation, carnival once again came under heavy pressure, causing it to disappear in many parts of Europe. In the most Catholic parts of Europe, however, the carnival tradition kept on smouldering underground, finally reappearing in the early nineteenth century. It is in this period that the carnival celebration began to truly resemble what it is today.

2.2 Aalst Carnival and intangible cultural heritage²⁶

2.2.1 A brief history of Aalst Carnival

Festivities have been organised in the Netherlands during the Lent since the beginning of the tenth century. These were ecclesiastical feasts of fools between the end of winter and the beginning of summer.

²⁶ This text is based on *Aalst Carnaval*, www.immaterieelerfgoed.be (website of the Flemish government, moderated by the Werkplaats Immaterieel Erfgoed as a national organisation that is active on behalf of intangible heritage in Flanders); Wim BEELAERT, "Vijf eeuwen vastenavond in de carnavalstad Aalst", www.users.telenet.be/wim.beelaert/vastenavond/inleiding.html and Wim BEELAERT, "Carnaval", www.immaterieelerfgoed.be/files/attachments/.327/Waar_is_de_tijd_carnaval_deel_1.pdf and www.immaterieelerfgoed.be/files/attachments/.328/Waar_is_de_tijd_carnaval_deel_2.pdf.

They reminded of New Year's celebrations from classic antiquity and contained elements of Germanic-Celtic fertility rituals such as the reversal of the existing order or the offering of food. From the fourteenth century onwards, the festivals gained a secular character and were celebrated in the streets. The first mention of *Vastenavond* (Shrove Tuesday) in Aalst dates from the **fifteenth century**.

The authorities began to organise more and more activities around the period of Shrove Tuesday as a way to gain some control over the traditional spring festivals, which in the past were blatantly celebrated by the young people in the city. Shrove Tuesday became a celebration by and for the entire population. In the course of the sixteenth century, the organised municipal Shrove Tuesday celebrations gradually disappeared. The Church took offense to the excesses that accompanied the festival and encouraged the authorities to curb the festivities. The first prohibitions appeared in Aalst in the seventeenth century.

However, the celebration discreetly persisted and evolved into spontaneous popular entertainment in the course of the **eighteenth century**. While the bourgeoisie celebrated Shrove Tuesday with ostentatious balls behind the facades of stately mansions, the young people of the less wealthy classes took to the streets in disguise. In the second half of the eighteenth century, the prohibitions became stricter once more because pamphlets, folk songs, parties and demonstrations were also used for political purposes. After the Belgian revolution there was even a ban on all festivities during the days around Shrove Tuesday.

Once the problems related to the separation between North and South (the Netherlands and Belgium) were resolved, the fun was no longer a threat to the new authority. In 1847, masked people once again appeared in the streets, according to the Aalst press. Since the **mid-nineteenth century** the city administration annually published in the newspapers when it was permitted to wear masks and disguises in the streets.

On Sunday, **March 9, 1851**, the first Aalst Shrove Tuesday Parade was organised. Soon afterwards, for the first time in a carnival procession, current affairs were mocked, something that would not become the trademark of Aalst Carnival until many years later.

At the time, it was nothing like an annual parade. Nevertheless, between 1851 and 1923, at least eighteen carnival parades were held in Aalst. The organisation varied from one parade to the next and often had a political character.

It is no coincidence that remarkable street scenes occurred in the period of these first parades. Since "blaming and mocking each other" was an important carnival custom, it was indispensable to be unrecognizable with costumes and masks. The few known incidents were often politically inspired.

People rarely participated in the Shrove Tuesday entertainment individually. They often went out at night in what were known as Shrove Tuesday companies. These groups were often formed by workmen from the same factory or neighbourhood. They worked together on costumes, so that each member of the group would look more or less the same, or they saved-up money to buy or rent costumes together. Some working-class families would save for months for a fine costume.

From 1900, two new initiatives were taken that would have a significant and lasting impact on the development of carnival: the organisation of an annual **Winterfoor** (Winter Fair) and the establishment in 1902 of the '**Municipal Commission of Public Festivities**', an organisation of local business owners that received support from the city council and whose main activity was to organise a large-scale carnival party. The first edition of the modern Aalst Carnival took place in 1923.

The appearance of the parade was determined by the participating groups and their colourful costumes. As its success grew, the number of participating carnival associations increased year by year.

At the end of the nineteenth century a new phenomenon emerged: the workers, who could not afford an expensive carnival costume or mask, resorted to wearing their wife's old clothes. Even back then they were referred to as 'dirty sissies' by the local press. "Dirty" referred to both the messy clothes as to the dirty, nasty language that **Voil Jeanetten** used when voicing insults. Incidentally, this was not a typical Aalst character, because "dirty sissies" were seen increasingly in other cities such as Antwerp and Ghent, as well.

Over the years, more and more Aalst carnivalists began to march in an **unorganised** capacity among the official groups in the parade. Wearing costumes and carrying the most outlandish props, they made fun of local political situations. These "informal groups" were tolerated because they were able to fill up the dull moments and gaps in the parade and added a touch of local Aalst flavour.

As the years progressed, the **quality** of the groups that participated in the parade gradually declined. In 1946 there were only nine groups of Aalst participating in the parade. Aalst realised that the lack of their own high-quality groups was jeopardising the future of carnival and in 1952 the Aalst pharmacist Marcel De Bisschop launched a prize for originality. 2000 Franks would be awarded to the Aalst-group with the most clever satire. The call was answered: in 1955 the number of Aalst groups in the parade rose to seventeen. The quality was not always outstanding. It was suggested that some groups went too far, both in their choice of subject to be portrayed as in its portrayal. *"In the future the groups will be controlled more often and more strictly and those who do not comply will automatically be excluded from the parade"*, the Party Committee noted in 1957.

In 1960 the carnival was further renewed under impulse of the city council. From then on, a **Driekoningenfeest** (feast of the Epiphany) celebration was organised as the start of the festive period. Another novelty was the **onion throwing** before the start of the Monday parade, which was held for the first time in 1957. Finally, as a grand closing apotheosis on Tuesday evening carnival was symbolically burned with the **effigy burning**.

2.2.2 The modern carnival

Aalst Carnival has been a unique folk festival since the 1960s. Gathered into dozens of organisations, thousands of volunteers work for months to ensure the success of the festivities.

The carnival season officially starts at **Driekoningen** (feast of the Epiphany). The candidates for the coveted title of Prince Carnival are presented to the public on that day, after which a full-blown campaign for the election is launched, which captivates the city for weeks. The **Prince Election** itself is always a grand spectacle with music and dancing. The winner will be the city's ambassador for a year.

The carnival weekend is opened with a satirical carnival council meeting on Saturday. Politicians and famous people from Aalst are roasted in typical carnival style. On Saturday evening, the **Jefkesbal** is organised by the Jefkes of Sint-Anna. It is one of the last true traditional fancy-dress carnival balls in the city.

On Sunday it is time for one of the most famous parts of Aalst Carnival: the **parade** with dozens of floats. Eighty "official groups" join the Sunday and Monday parade, in which many current topics are treated satirically. The preparations usually start months in advance and each group tries its best to amaze the public with its beautifully crafted floats and costumes. In addition, there are still more than 200 "informal groups" in the parade. These are smaller groups of carnivalists who do not build large floats, but are well placed to respond to current events in a playful manner.

On Monday, the *Gilles* banish the winter spirits with their traditional **broom dance** on the Grote Markt. Then thousands of people try to catch the golden onion during the **onion throwing**. In the afternoon the parade travels through the streets a second time. By the evening the jury has reached its verdict and announces which groups have won in the categories of small, medium and large groups. The day ends with another carnival night on and around the Grote Markt where all the streets and numerous down-town cafés turn into one large, bustling crowd of partygoers. The true Aalst carnivalists are unmatched in the ultimate carnival sport: insulting each other without being recognised. That too is part of the intangible heritage of celebrating carnival.

On Tuesday afternoon, a procession of thousands of **Voil Jeanetten** marches through the city centre. That evening, the curtain falls on the carnival celebration with the burning of the **Vastenavondpop** (Shrove Tuesday effigy). For many, this is a very emotional moment, after which the call to continue partying ("*Doeme voesj*") is massively followed.

Thus, since the fifteenth century, Aalst Carnival has evolved into a three-day folk festival, a large-scale event enjoyed by all layers of the population.

Aalst Carnival is currently seen as a celebration of free expression and satire. The three-day festivities are characterised by a distinctly mocking, anarchist and political-social satirical character. The Aalst tradition is therefore typical of the traditional meaning of carnival, acting as a **reversal ritual**. Rich becomes poor, man becomes woman, white becomes black... Rituals with this reversal of values return in various parts of the carnival celebration, including the carnival parade.

The reversal is practised on all elements in urban society: social, behavioural, characteristic, but also in terms of gender, as in the "*Voil Jeanet*" tradition. Here the reversal goes further than male-female: everything associated with being a woman is reversed: repulsive ugliness becomes the foremost goal.

2.2.3 Aalst Carnival as 'controversial' intangible cultural heritage²⁷

Immaterial heritage is living heritage. Intangible heritage is living heritage. They are (intangible) habits and customs with roots in the past, which people cherish and maintain. It is about knowledge and skills that people want to keep alive and pass on to future generations. Intangible heritage is therefore about people: from individual to organised practitioners, volunteers, participants... We call them (immaterial) heritage communities. Intangible heritage can also refer to the actions that people (un)consciously perform to continue their traditions and techniques. Different generations adapt their practices to changing circumstances where necessary, with a view to their future. These practices are divided into five areas: oral heritage, performing arts and music, social customs and practices, nature and the universe, craft skills and techniques, according to the Unesco 2003 Convention for the Safeguarding of Intangible Cultural Heritage.⁽²⁹⁾ It goes without saying that there is also immaterial heritage that belongs in various domains or falls outside these categories.

The Unesco 2003 Convention is best known for its List(s) of Intangible Cultural Heritage, although the Convention is about much more than that. Its objectives are far-reaching. In the first place, this international policy instrument focuses to safeguard the immaterial cultural heritage and the sustainable survival of living heritage. In addition, the Convention strives for respect for this heritage of communities, groups and individuals involved. It also wants to stimulate awareness of the importance of this heritage at the local, national and international level, and wants to create international cooperation and guidance around it. The Convention, and its participating member states, recognise intangible heritage as an important resource for the well-being of communities, sustainable development of society and mutual understanding in and between countries.

Article 2 of the Unesco 2003 Convention states: "This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

Article 15 of the Unesco 2003 Convention states: Within the framework of its safeguarding activities of the intangible cultural heritage, each State Party shall endeavour to ensure the widest possible participation of communities, groups and, where appropriate, individuals that create, maintain and transmit such heritage, and to involve them actively in its management.

²⁷ This paragraph was written in cooperation with Jorijn Neyrinck, coordinator Werkplaats Immaterieel Erfgoed and member of the Flemish UNESCO committee.

Based on the Unesco-Convention, since 2006 there has also been a Flemish Immaterial Cultural Heritage Policy and an accompanying Inventory Flanders of Intangible Cultural Heritage, which provides an overview of habits and customs, knowledge and practices in Flanders that are 'safeguarded'. As with the Unesco policy, the focus is on creating opportunities for the continued existence and future development of living cultural practices and traditions and supporting the heritage communities within them.

Aalst Carnival has since been recognised as intangible cultural heritage on the Flanders Inventory and has been placed on the Representative List of intangible cultural heritage of Humanity by UNESCO.

Aalst Carnival was described as such at the time of its inclusion on the Unesco Representative List in 2010:

When it was placed on the representative list of UNESCO in 2010, Aalst Carnival was described as:

“Exuberant and satirical, the celebration features a Prince Carnival, who symbolically becomes mayor and receives the key to the city in a ceremony marked by ridicule of the city’s actual politicians; a procession of effigies of giants and ‘Bayard’, the horse from the Charlemagne legends; a broom dance in the central market to chase away the ghosts of winter; a parade of young men dressed as women with corsets, prams and broken umbrellas and a ritual burning of the carnival effigy – accompanied by shouts insisting that the feast will go on for another night. In addition to the carefully-prepared floats of official entrants, informal groups join the festivities to offer mocking interpretations of local and world events of the past year. The 600-year-old ritual, drawing up to 100,000 spectators, is a collective effort of all social classes and a symbol of the town’s identity in the region. Constantly recreated by new generations, the ancient carnival’s collective laughter and slightly subversive atmosphere celebrate the unity of Aalst.”

In an official reaction, UNESCO condemned the float of carnival group *De Vismooil’n* in 2019, after complaints of anti-Semitism. Those involved in the Jewish community felt hurt by the images of the float of *De Vismooil’n*. UNESCO was also contacted in order to report this and have Aalst Carnival removed from the list.

A few weeks later a meeting of the Office of the Intergovernmental Committee (IGC) took place, where the decision was made to put the issue on the agenda for the next IGC meeting in Bogota (Colombia) at the end of 2019.

Formally speaking, there is currently no procedure to remove an element from the Representative List. But through this decision of the Office, the issue is nevertheless on the agenda for consideration.

The impact of the event, of the media attention and of the public debate that took place in the spring of 2019, has therefore been considerable for the parties involved.

From the side of Aalst Carnival, the desire has been expressed to place the event in the appropriate historical and cultural context. As already described above, Carnival Aalst is seen as a celebration of freedom of expression and satire. In the specific context of carnival, social roles are reversed and norms for proper behaviour are suspended.

“The use of grotesque images and burlesque stereotype exaggerations are inextricably linked to the carnival tradition”, minister Sven Gatz pointed out during a parliamentary discussion on Aalst Carnival on 28 March 2019.²⁸

²⁸ Request for justification of the recognition of Aalst Carnival as intangible cultural heritage from Marius Meremans to Minister Sven Gatz, Culture, Youth, Sport and Media Committee, 28 March 2019, question 891 (2018-2019).

Through the depictions in the press and the media, the scene presented by *De Vismooil'n* was taken out of the context of the parade and the carnival event. Decontextualization, and the ensuing discussion, can in turn damage the heritage community in question and the intangible heritage practice of Aalst Carnival.

In recent years, it has become clear how intangible heritage, in addition to all kinds of positive effects and appreciation, can sometimes elicit a social debate and controversy. After all, living heritage is at the heart of contemporary society, and so it is only natural that it moves and evolves along with social issues, developments, norms and values.



Voil Jeanetten (Photo: Shutterstock).

In Aalst, too, certain things evolved after the necessary discussions. In the early nineties, the figure of the "*voil jeanet*" (dirty sissy) took on a negative and vulgar image after exhibitionistic obscenities and offensive incidents with offal. As a result, the Festival Committee launched a campaign to promote the "*proeper voil jeanet*" ("*clean dirty sissy*") and the slogan "*me moi giënen ambras, want ik ben een voil jeanet mei klas*" ("*you'll get no trouble from me, I am a classy dirty sissy*") quickly became established. As a result, the tradition had a real resurgence and the Voil Jeanet became the symbol of Aalst Carnival. There are also local promoters today who are campaigning to restore the traditional figure and to ban transvestites and pornographic images from the procession.²⁹

The Prince Election has also evolved. In 2012, after much discussion among the people of Aalst about whether this was possible, a woman was elected as

Prince Carnival for the first time in history. A few editions later the people of Aalst welcomed a prince with a disability and a prince with migration roots.

Things that we find quite "normal" or acceptable today were not considered as such for several decades and may sometimes only recently have become solidly established in society.

As a (local or other) authority, it is neither easy nor desirable to interfere too much in these evolutions. In line with the UNESCO Convention, it is after all the heritage communities themselves that come first. In the Convention and the ensuing policies and instruments, the principle is strongly endorsed that those involved ("*communities, groups, and in some cases individuals*") must be able to have and maintain far-reaching control of (everything that happens with and in relation to) their heritage (practice). It is they who must be able to lead the traditions, and therefore also the specific interpretation of the carnival celebration and floats. Regulation or censorship could influence the intangible cultural heritage too much from the outside or above and compromise the dynamics of the heritage.

Under the influence of social evolutions and debates, the heritage practices themselves also adapt dynamically to the latest prevailing expectations, ethical considerations, legislation and standards, technological innovation, etc. This obviously does not always happen smoothly. And sometimes there can be some tension and delays on the renewal before the development or change of long-standing customs becomes embedded and accepted.

Engaging in dialogue/pluralistic discussions with mutual respect are without a doubt critical success factors in the context of a rapidly evolving and increasingly diverse and highly mediatised society.

²⁹ Aalst Carnaval: 'Voil Jeanetten' vragen meer etiquette, www.vrt.be (5 March 2019).

Finally, this is also in line with a passage from the Declaration of Ethical Principles for Intangible Cultural Heritage launched earlier this year by the Flemish government:

*"All intangible cultural heritage, including heritage that is found to be controversial, will be approached in an atmosphere of mutual respect and dialogue, that is to say from respect for the diversity of intangible cultural heritage and for those involved, but also with respect for others who do not experience this heritage or who object to it."*³⁰

2.3 The use of stereotypes



Film 'Der ewige Jude' (1940).

Unia has - along with others - pointed out the "clear anti-Semitic character" of the float of *De Vismooil'n*.³¹ The carnival group had used a series of **anti-Semitic stereotypes**. Jews were presented as having a specific body characteristic such as thick and dark hair, thick lips, dark, beady eyes and a distinctive nose.³² Jews were also associated with commerce and money, which resulted in an association with both wealth and greed and avarice.³³ The depiction of Jews together with rats is typical of the Nazi propaganda and also appears in the film *Der ewige Jude* (1940). By associating Jews and rats, "the Jew" was transformed into a harmful parasite that had to be destroyed.³⁴

The term stereotype consists of two ancient Greek components: "*stereos*" (fixed) and "*typos*" (form) and is described in the dictionary as "*fixed image*". One particular property of a (minority) group is isolated and that property is then presented as characteristic of the entire group. "*Stereotypes are generalisations and simplifications of reality that reduce a group to a cliché image. We then apply these general cliché images about groups to individuals.*"³⁵ Thus, "the Belgians" are presented stereotypically with fries or beer, "the Dutch" with clogs or cheese, "the French" with baguettes or a beret ...

Everyone uses stereotypes. After all, stereotypes make it possible to reduce a complex reality to simple representations. In this way it becomes possible to get a quick picture of new and unknown situations and people.³⁶

A driver will intuitively slow down when he sees an old lady standing by the side of the road, even if that person may still be very alert and spry. But it is precisely because of generalisation and simplification that stereotypes are almost never correct and give a wrong image of individuals.³⁷

Stereotypes can also aim to divide the world into **two groups**: the group to which one belongs and all other groups. People have a positive and nuanced image of their own group, which they know well. Of the other groups, which people do not know well, they have a (more) negative and generalised picture. The people from the other groups are seen as being the same.³⁸ This then leads to statements like "*all (male) gays are effeminate*," or "*all blacks are lazy*."

³⁰ Available on www.kunstenenerfgoed.be/sites/default/files/generated/files/handleiding/190129_De%20ethische%20principes%20verbonden%20aan%20de%20InveVerklaring%20Ethische%20Principes%20verbonden%20aan%20de%20Inventaris%20Vlaanderen_.pdf

³¹ P. BRENER, "Carnaval d'Alost : pourquoi la condamnation n'est-elle pas unanime", Regards April 2019, 9.

³² Stereotypen over het uiterlijk en innerlijk van de Joden, www.antisemitisme.nu.

³³ Stereotypen over het materialisme van de Joden, www.antisemitisme.nu.

³⁴ KAZERNE DOSSIN, catalogue for the exhibition 'de imaginaire Jood' ('the imaginary Jew'), Mechelen, Kazerne Dossin, 2016, 24 (www.kazernedossin.eu/NL/Info/Langerman/catalogus-langerman-Super-OK).

³⁵ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

³⁶ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

³⁷ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

³⁸ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

Although stereotypes can be useful because they allow us to process the abundance of information that confronts us every day, they can also lead to **discrimination** if they are used incorrectly. For example, the stereotyped image that older employees would be less flexible, get sick more often or would be unfamiliar with modern work equipment could lead to discrimination against older applicants on the labour market.³⁹ In other words, applicants are rejected or not approached on the basis of images that (for example) their name or age brings to mind for employers and not on the basis of their individual capacities.⁴⁰

Stereotypical representations can consciously and intentionally lead to discrimination. Often, however, stereotypes will **unwittingly and unintentionally** lead to discrimination. After all, discrimination not only results from discriminatory and racist intentions; but also well-intended, comical or playful expressions can be discriminatory (and offensive) due to the effects they have.⁴¹ That is why care must be taken not to be too quick to apply labels such as "racist", "anti-Semite" or "homophobic". In the Netherlands it was noted, following the debate about the figure of Zwarte Piet, *"that it goes too far to portray people who celebrate Sinterklaas with traditional Zwarte Pieten as 'racists'."*⁴²

Because stereotypes often have a long history and are constantly reinforced (in the media, in advertising, in the folk culture...) they are particularly persistent and difficult to change. On the other hand, the discriminatory effects of stereotypes can be reduced by becoming aware that stereotypes are being used that can lead to discrimination. More consciously dealing with stereotypes creates a more realistic image of a person's real qualities, people from one's own group are less overrated and people from the 'other' group are less underestimated. Not only **awareness** is important, but also contact between groups, because this can change the stereotypical image.⁴³ Through **dialogue** a certain stereotypical image can be stripped of its discriminating aspects and in this way, the stereotypical image can be prevented from resulting in discriminatory behaviour or action.

Polarisation should be avoided at all costs, because it makes the conversation more difficult, if not impossible, so that no solution can be found that is acceptable to all.⁴⁴ Above, we have referred to the debate about the figure of **Zwarte Piet**. In the Netherlands, it caused an absolute stand-off between proponents and opponents. Proponents were of the opinion that Zwarte Piet is part of an age-old, valuable Sinterklaas tradition that has nothing to do with racism. Opponents felt that Zwarte Piet promoted a racist stereotype, maintained racism and needed to be changed.⁴⁵ In Belgium, Unia published a position in October 2014 on the figure of Zwarte Piet, which established that the figure of Zwarte Piet as such does not constitute a criminal form of racism or a legally prohibited form of racial discrimination and which called for a constructive social debate:

³⁹ see for example, the Labour Court of Ghent 2 May 2016 and Labour Court of Ghent 13 June 2017, www.unia.be.

⁴⁰ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

⁴¹ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

⁴² Wat is het standpunt van het College voor de Rechten van de Mens in de discussie over Zwarte Piet and discriminatie?, www.mensenrechten.nl.

⁴³ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

⁴⁴ Stereotypering: wat is dat en hoe werkt het?, www.mensenrechten.nl.

⁴⁵ Wat is het standpunt van het College voor de Rechten van de Mens in de discussie over Zwarte Piet en discriminatie?, www.mensenrechten.nl.

*"Unia is in favour of transforming the discussion around the Sinterklaas party into a constructive social debate. A debate about the way in which we will portray that ancient folk custom in the future. In addition, we call for the figure of Zwarte Piet to be presented in any case, as something other than a stupid, subordinate or dangerous black man - which causes stereotypes about black people to be maintained, whether intentionally or not. Unia hopes that the Sinterklaas holiday itself, and the image surrounding it, will be handled with care, and that the "Zwarte Piet debate" will not assume extreme proportions. Let it become a debate "with" each other and not "against" each other. Only then can December 6 remain a welcome and child-friendly holiday."*⁴⁶

In the case of the float of *De Vismooil'n* as well, Unia immediately called for a constructive dialogue.⁴⁷



Use of Nazi symbols in 2015 (Photo via Foter.com - saigneurdeguerre)



Blackface en 2014 (Photo via shutterstock.com - Sergey Dzyuba)

⁴⁶ Zwarte Piet: the position of the Centre, www.unia.be (22 October 2014).

⁴⁷ Press release: Aalst en Melle: Unia pleit voor dialoog, www.unia.be (5 March 2019).

3 Legal analysis: overall framework

The freedom of individuals and groups to express themselves without the authorities' restriction is one of the most fundamental human rights. The freedom of expression and information is explicitly protected in Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR). The protection mechanism from the ECHR applies in full in Belgium, although the Belgian Constitution goes even further than the required minimum protection, according to the ECHR.⁴⁸ The overall legal framework for freedom of expression and information will be discussed below.

3.1 Freedom of expression and information in article 10 ECHR

Article 10 ECHR formulates the general principle of freedom of expression and information in § 1 and emphasises in § 2 that the exercise of that freedom also entails duties and responsibilities, which means that this freedom can be subject to restrictions.

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (...)*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (Article 10 ECHR).*

The term "expression" must be broadly interpreted and includes "every activity of the expressing human mind in word, image and behaviour."⁴⁹ You may therefore express your opinion to a specific or undefined audience, in any field, with any purpose (philosophical, political, artistic, social, commercial, recreational ...) and with any means that may be useful to get the message across (spoken and written word, image, display, music, symbols ...).⁵⁰

⁴⁸ K. LEMMENS en J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS en M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerpen, Intersentia, 2018, 125 en 140.

⁴⁹ K. RIMANQUE, "De vrijheid van informatie en de vrijheid van mening in verband met uitzendingen van radio en televisie", RW 1969-70, 1607-1608 and J. VELAERS, *De beperkingen van de vrijheid van meningsuiting*, Antwerp, Maklu, 46. In article 19 of the International Covenant on Civil and Political Rights (ICCPR), with regard to freedom of speech reference is also made to "either orally, in writing or in print, in the form of art, or through any other media of his choice."

⁵⁰ K. RIMANQUE, *De Grondwet toegelicht, gewikt en gewogen*, Antwerp, Intersentia, 1999, 47 and S. SOTTIAUX, *Grondwettelijk recht*, Antwerp, Intersentia, 2016, 358.

The case law of the European Court of Human Rights (ECHR) emphasises the importance of freedom of expression and information as a foundation and guarantee in a democratic society with a view to achieving an open, tolerant and pluralistic society, where there is also room for non-conformist, disruptive or offensive opinions⁵¹ as well as for levity and banter.⁵²

*"The freedom of expression and information is one of the pillars of a democratic society. It applies not only to the "information" or "ideas" that are favourably received or that are considered harmless or neutral, but also to those that "shock, upset or hurt the State or another group of the population". For the sake of pluralism, tolerance and the spirit of openness, without which there can be no democratic society."*⁵³

The freedom of expression and information not only applies to harmless, conventional or banal expressions. In a democratic society there must also be room for deviating, harsh voices that "shock, disturb or hurt".⁵⁴

Finally, the ECHR can make use of **Article 17 of the ECHR** and can declare a petition inadmissible. Article 17 ECHR, also known as the guillotine clause, also known as the abuse clause, states that the rights and freedoms from the ECHR may not be used (abused) to extinguish or substantially restrict other people's rights and freedoms. In other words, enemies of democracy are denied the enjoyment of ECHR rights and freedoms. Article 17 ECHR is, for example, cited when there is clear evidence of calls for violence.⁵⁵

3.2 The protection of freedom of expression and information in the Belgian Constitution and the ban on preventative measures

Article 10 of the ECHR imposes minimum protection, but it does not in any way prevent Member States from applying their own emphasis or offering greater protection in the area of freedom of expression and information. **Article 19** of the Belgian Constitution contains a general provision on freedom of expression and information.

Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished. (Article 19 of the Constitution).

Article 26 of the Constitution guarantees the right to peaceful assembly and prohibits preventive measures.

⁵¹ D. VOORHOOF and P. VALCKE, *Handboek Mediarecht*, Brussels, Larcier, 2011, 39.

⁵² J. VELAERS, "De Antidiscriminatiewet and de botsing van grondrechten", in CENTRUM GRONDSLAGEN VAN HET RECHT (ed.), *Vrijheid and Gelijkheid. De horizontale werking van het gelijkheidsbeginsel en de nieuwe antidiscriminatiewet*, Antwerp, Maklu, 2003, 378.

⁵³ ECHR 7 December 1976, no. 5493/72, *Handyside/United Kingdom*, § 49; ECHR 23 September 1998, no. 24662/94, *Lehideux and Isorni/France*, § 55 and ECHR 28 September 1999, no. 22749/93, *Öztürk/Turkey*, § 64.

⁵⁴ K. LEMMENS and J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerp, Intersentia, 2018, 135.

⁵⁵ K. LEMMENS and J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerp, Intersentia, 2018, 135-139. See also D. VOORHOOF, "Hate speech., radicalisering en het recht op expressievrijheid. Waarom artikel 17 EVRM (misbruikclausule) geen revival verdient", *A&M*, 2016, 4-18.

Belgians have the right to gather peaceably and without arms, in accordance with the laws that can regulate the exercise of this right, without submitting it to prior authorisation (Article 26 of the Constitution).

The term "gather" refers to private or public meetings such as parades, demonstrations, dance parties, *sit-ins* ... The motive of the gathering, or the content of the message being proclaimed, is not relevant for the definition of the scope of application.⁵⁶

The second paragraph of Article 26 of the Constitution adds that meetings *in the open air* remain fully subject to **police regulations**. However, police measures must have as their object the maintenance of public order.⁵⁷ They may not limit the freedom of expression and information more than is necessary for law enforcement. They may also not be issued for purposes other than law enforcement, for example to exercise censorship.⁵⁸ Therefore, police measures issued to prevent statements that were "contrary to public decency and good taste" or "subversive and immoral" - police measures thus censoring - were found to be contrary to the Constitution.⁵⁹

3.3 The importance of context

When assessing the limits of freedom of expression and information, the context in which the expression occurs must also be taken into account.⁶⁰ That context can have an "aggravating" or "exculpatory" insolence.⁶¹ In the case of the float of *De Vismooil'n*, it is about the very **specific context of carnival** which is a local event that takes place annually during a *short period*.

*In a 1991 judgment, about a photograph of a public person who was carried around by three Voil Jeanetten during the Aalst carnival, the court pointed out that during the short period of carnival, riotous and carnivalesque behaviour is permitted, after all, "the fun of carnival consists of behaving in an unrestrained - yes even debauched - manner for a short period of one or more days."*⁶²

Certain expressions can be problematic - even punishable - in a specific context, but they are not necessarily so in a different context (such as carnival). Carnival is, after all, the feast of excess, exaggeration, ridicule, resentment and exuberance. It is a short period each year in which social conventions can and may be ignored and in which there is room for a great deal of debauchery. The transgression that takes place during carnival implicitly confirms the fact that what is said or portrayed would not be acceptable in other circumstances.

⁵⁶ S. SOTTIAUX, *Grondwettelijk recht*, Antwerp, Intersentia, 2016, 372.

⁵⁷ K. RIMANQUE, *De Grondwet toegelicht, gewikt en gewogen*, Antwerp, Intersentia, 1999, 68-69.

⁵⁸ J. VELAERS, *De beperkingen van de vrijheid van meningsuiting*, Antwerp, Maklu, 1991, 757, 758 and 763.

⁵⁹ J. VELAERS, *De beperkingen van de vrijheid van meningsuiting*, Antwerp, Maklu, 1991, 760.

⁶⁰ S. SOTTIAUX, *Grondwettelijk recht*, Antwerp, Intersentia, 2016, 362. See also F. KRENC, "La liberté d'expression vaut pour les propos qui heurtent, choquent ou inquiètent. Mais encore?", *RTDH* 2016, 337.

⁶¹ K. LEMMENS and J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerp, Intersentia, 2018, 153.

⁶² Rb. Brussels 25 April 1991, aangehaald in L. DIERICKX, *Het recht op afbeelding*, Antwerpen, Intersentia, 2005, 163. See also B. MOUFFE, *Le droit à l'humour*, Brussels, Larcier, 2011, 496-498.

Carnival offers a release valve through which citizens must be able to let off steam. What you see is not always pretty and appropriate - and is often even vulgar, cruel and tasteless - but it is the price of socially tolerated excess.⁶³

A stereotype in the context of carnival does not therefore have the same meaning as in an everyday situation. Elements from a carnival parade, floats, disguises ... should not be viewed as if they had manifested themselves outside the context of carnival.⁶⁴

In Belgium, people were convicted of painting swastikas, for example at a mosque, on the skulls of the deceased (after desecration of graves) or on suitcases of travellers from or to Tel Aviv.⁶⁵ As well as performing the Hitler salute in public; for example, during the city council, a meeting of neo-Nazis or a session of the court.⁶⁶ Each time the specific context was taken into account.⁶⁷

*In another context, the introduction of swastikas or the public performance of the Hitler salute would not constitute a criminal offense. This could include films such as *La Grande Vadrouille* (G  rard Oury), *La vita    bella* (Roberto Benigni), *The Great Dictator* (Charlie Chaplin), *Cabaret* (Bob Fosse) or *La caduta degli dei* (Luchino Visconti) in which swastikas, fascist salutes, (other) Nazi symbols ... can be seen, without, however, constituting a criminal offense. Numerous examples can be found in other domains, such as theatre performances, (scientific) publications, educational material, exhibitions in museums...*

3.4 The Alves Da Silva vs. Portugal ruling (ECHR 20 October 2009)

The European Court of Human Rights ruled in *Alves Da Silva vs. Portugal* in 2009 on events that occurred during a carnival parade. A resident of the municipality of Mort  gua had made a plaster doll intended to depict the local mayor. He had placed the doll on his van with a sign reading "Set-Narba Inc." (the latter was an anagram of the mayor's name), a large bag of money, and a sound system. He had driven that van around during the carnival period. The person concerned was convicted by a Portuguese court, but the European Court of Human Rights ruled unanimously that the conviction was contrary to Article 10 ECHR.⁶⁸

The European Court of Human Rights pointed out that: "*Satire is a form of artistic expression and social commentary which, by the exaggeration and distortion of the reality that characterises it, naturally aims to provoke and agitate. Therefore, any interference with the right of an artist - or any other person - to express himself or herself through this means must be examined with particular attention.*"⁶⁹ This passage was repeated from the 2007 *Vereinigung Bildender K  nstler vs. Austria* judgment, which concerned a painting depicting famous figures in all kinds of sexual positions. In this judgment, the Court emphasised that the persons concerned were portrayed in an unrealistic and exaggerated manner.⁷⁰ The more the image deviates from reality, the greater the tolerance threshold must be.

The Court then also referred to the nature and content of the statements and to the context of carnival, as a result of which the statements could not be taken literally.⁷¹

⁶³ K. LEMMENS, "Carnaval is bij uitstek een feest waarbij burgers stoom moeten kunnen afdaten", www.knack.be/nieuws/auteurs/koen-lemmens-ku-leuven-vub-689.html.

⁶⁴ K. LEMMENS, "Carnaval is bij uitstek een feest waarbij burgers stoom moeten kunnen afdaten", www.knack.be/nieuws/auteurs/koen-lemmens-ku-leuven-vub-689.html.

⁶⁵ Crim. Ct. Tongeren 19 April 2017, Crim. Ct. Brugge 5 February 2019 and Crim. Ct. Brussels 16 March 2006, www.unia.be.

⁶⁶ Crim. Ct. Ghent 21 May 2019, www.unia.be.

⁶⁷ Crim. Ct. Brussels 15 July 1996, Crim. Ct. Antwerp 26 March 2001, Crim. Ct. Antwerp 4 February 2002 and Crim. Ct. Charleroi 15 June 2009, www.unia.be.

⁶⁸ ECHR 20 October 2009, no. 41665/07, *Alves Da Silva/Portugal*.

⁶⁹ ECHR 20 October 2009, no. 41665/07, *Alves Da Silva/Portugal*,    27.

⁷⁰ ECHR 25 January 2007, no. 68354/01, *Vereinigung Bildender K  nstler/Oostenrijk*,    33.

⁷¹ ECHR 20 October 2009, no. 41665/07, *Alves Da Silva/Portugal*,    28.

Finally, the Court referred to the role of satire in the public debate: *“Criminal punishment of behaviour such as that of the applicant in this particular case may have a deterrent effect on satirical interventions on social issues which may also play a very important role in the free debate of issues of general interest, without which there can be no democratic society.”*⁷²

This judgment concerned a public figure (also a politician) who was publicly mocked, so the comparison with the float of *De Vismooil’n* should be made with a degree of caution.

⁷² ECHR 20 October 2009, no. 41665/07, Alves Da Silva/Portugal, § 29.

4 Comparison with the Belgian legal framework

Article 10 ECHR allows restrictions on freedom of expression and information to the extent that those restrictions have a legal basis, serve to protect one of the goals listed in the second paragraph of Article 10 ECHR (legitimacy test) and are necessary in a democratic society (proportionality test).⁷³ In Belgium, certain expressions that exceed the threshold of "shock, distress or hurt" were excluded from the law because of the damage they cause to society.⁷⁴ Below, we examine whether certain expressions in the context of carnival - and more specifically the float of *De Vismooil'n* - can be punishable under Belgian laws that restrict freedom of expression and information.

4.1 Certain expressions are punishable

The discussion about the float of *De Vismooil'n* repeatedly pointed to the anti-Semitic character of the float and the stereotypical representations of the (orthodox) Jews by *De Vismooil'n*.

*"The float in Aalst was anti-Semitic (...). The problem with the float was that it recycled the age-old stereotype of Jews and money (...). The myth probably started with the Gospels, when Judas betrayed Jesus for 30 pieces of silver. In the Middle Ages, the stereotype of Jews and money was so ingrained that "Judaizing" became synonymous with borrowing money, although the vast majority of borrowers were not Jewish. Shakespeare's heartless "merchant of Venice", the moneylender Shylock, was a Jew. Karl Marx, who is considered Jewish, even though his parents had converted to Christianity before his birth, wrote that "the true God of the Jews is money." Richard Wagner added that "the Jew ... will rule as long as money remains the power before which all our doings and dealings lose their force." And the Nazis accused the Jews of being both the worst communists and the worst capitalists."*⁷⁵

From a legal point of view, a distinction must be made between statements that are anti-Semitic and/or stereotyped and statements that are criminal. The Anti-Racism Act is the Act for the criminalisation of *certain* acts driven by racism or xenophobia and the Anti-Discrimination Act is the act to combat *certain* forms of discrimination. The name of the Act alone shows that not all forms of racism or discrimination - and therefore also anti-Semitism, homophobia, Islamophobia, *ageism* - are punishable under Belgian law. What is criminalised, for example, is the public call for malicious discrimination, segregation, hatred or violence based on, among other things, Jewish descent or Jewish belief (incitement crime).

Statements that were excluded from the law in Belgium - and are therefore punishable - include, in addition to the incitement crime, also the dissemination of racist ideas, insulting a person and negationism. Below the components of these crimes will be explored (both the material aspects and the moral aspect) and will be applied to Aalst Carnival and more specifically to the float of *De Vismooil'n*.

⁷³ K. LEMMENS en J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS en M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerpen, Intersentia, 2018, 133.

⁷⁴ D. DE PRINS, "Het Grondwettelijk Hof en de federale antidiscriminatie wetten", in C. BAYART, S. SOTTIAU en S. VAN DROOGHENBROECK (eds.), *Actualités du droit de la lutte contre la discrimination. Actuele topics discriminatierecht*, Brugge, Die Keure, 2010, 9.

⁷⁵ F. CASSEN, "De mythe die joden al eeuwen achtervolgt", www.standaard.be/cnt/dmf20190325_04280303. See also P. BRENER, "Carnaval d'Alost : Pourquoi la condamnation n'est-elle pas unanime?", *Regards*, April 2019, 8-9.

4.2 Incitement crime

In Belgium it is a criminal offense to incite in public to discrimination, segregation, hatred or violence (Article 20 of the Anti-Racism Act, Article 22 of the Anti-Discrimination Act and Article 27 of the Gender Act).

4.2.1 Tangible components

Incitement means that people are encouraged, incited or provoked by words or other communicative expressions. The incitement must be focused on concrete actions, although those actions do not necessarily have to follow.⁷⁶

*According to the **Constitutional Court**, a person who incites must have the intention or the will to instigate a certain behaviour.⁷⁷ According to the **Court of Cassation**, on the other hand, it is not necessary to instigate specific acts or certain or definable acts, but it is sufficient to inspire others, for example, to strongly dislike or to adopt a generally negative attitude.⁷⁸*

Incitement must be done in public. Article 444 of the Criminal Code describes what that means. Public gatherings - such as carnival and other parades - are of course public.

In addition, the incitement must take place with regard to a person, a group, a community or its members on the grounds of a protected criterion.

*The protected criteria in the Anti-Racism Act are: nationality, a so-called race, skin colour, **(Jewish) descent** and national or ethnic descent (article 4, 4° ARA).*

*The protected criteria in the Anti-discrimination Act are: age, sexual orientation, marital status, birth, property, **religion** or creed, political convictions, trade union support, language, current or future health condition, disability, physical or genetic trait and social origin (article 4, 4° ADA).*

The Gender Act relates to the gender criterion. This is taken to mean: pregnancy, childbirth or motherhood, gender change, gender identity and gender expression (article 4 Gender Act).

⁷⁶ K. LEMMENS and J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerp, Intersentia, 2018, 151.

⁷⁷ Const. Ct. 12 February 2009, nr. 17/2009, recital B.67.2.

⁷⁸ Cass. 19 May 1993, no. P.93.0110.F.

4.2.2 Moral component

It is not sufficient for the material elements to be present for a crime to occur. It must also be demonstrated that the perpetrator had **malicious intent** and did not act purely out of negligence (or by accident). When there is doubt about the malicious intent, it must be decided that the crime has not been committed.

The Constitutional Court has explicitly determined that there must be a particular purpose. Because of that requirement, the Constitutional Court states, “*it is excluded that, if there is no such incitement, the distribution of pamphlets could be made punishable; the same should apply to jokes, mocking statements, opinions and any expression that, in the absence of the requisite particular purpose, falls under freedom of expression.*”⁷⁹

It must therefore be demonstrated that the perpetrator had the *malicious* intent and hope that the person he is targeting will discriminate against, segregate or hate other people, or will use violence against them.⁸⁰ Or further, “*the required moral component assumes that the perpetrator is only punishable if he was fully aware that he was inciting others to engage in discrimination, hatred or violence and that he nevertheless maliciously pursued this.*”⁸¹

An example may clarify the importance of the particular purpose.

*On the basis of articles 20 (incitement crime) and 21 (prohibition of dissemination) of the Anti-Racism Act, a complaint was filed against the printing, distribution and sale of the comic strip album **Kuifje in Afrika** (Tintin au Congo; [Tintin in the Congo]). The comic strip album, which first appeared in 1931, presents a stereotypical image of the black inhabitants of the then Belgian colony and they are depicted as stupid, childish and lazy. Hergé, the author of the comic book, later adjusted the story and acknowledged that while writing it he was strongly influenced by the colonial ideas that prevailed in the 1930s. A student believed that the comic book was a violation of the Anti-Racism Act. However, the court ruled that there was no particular purpose and that, consequently, there could not have been a breach of the criminal provisions invoked under the Anti-Racism Act. The court referred inter alia to interviews with Hergé who had declared that the comic album was a youthful indiscretion and that he would have gone about it completely differently if he had written it later. He did not know the country in the 1930s, and at the time he relied on hearsay about Africa and the Africans.*⁸²

4.2.3 Application to carnival

Apart from the question of whether the material elements of the incitement crime have been met, according to Unia it is very debatable whether the carnivalists acted with a particular purpose or malicious intent. In other words, that they had the intention and hope that others would discriminate, segregate or hate people from the Jewish community, or the Jewish community as such, or use violence against them.

⁷⁹ Const. Ct. 6 October 2004, no. 157/2004, recital B.51.

⁸⁰ J. VELAERS, “Het Arbitragehof en de antidiscriminatiewet”, TBP 2004, 609 and DE PRINS, S. SOTTIAUX and J. VRIELINK, Handboek Discriminatierecht, Mechelen, Kluwer, 2005, 323.

⁸¹ J. VELAERS, “Het Arbitragehof en de antidiscriminatiewet”, TBP 2004, 609 and K. LEMMENS and J. VRIELINK, “De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak”, in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), Recht in een multiculturele samenleving, Antwerp, Intersentia, 2018, 153.

⁸² Crim. Ct. Brussels 10 February 2012, www.unia.be. This ruling was confirmed by the Brussels Court of Appeal on 28 November 2012. See also E. CRUYSMANS, “La Cour d’appel a tranché: Tintin au Congo n’est pas un album raciste et xénophobe!”, <http://www.justice-and-ligne.be/article518.html>; J. VRIELINK, “Kuifje in Afrika en de antiracismewet”, NjW 2012, 530-534 and J. VRIELINK, “Kuifje in het land van justitie”, in Pro Deo. Ongevraagd juridisch advies voor vrijheidsstrijders en andere fanatici, J. VRIELINK (ed.), Leuven, Universitaire Pers Leuven, 2016, 46-51.

That the Jews were depicted on the float of *De Vismooil'n* in a stereotypical way - "with the dreaded hook nose"⁸³ - was rather coincidental because heads were recycled in order to save money. "The figure has been in the procession for years, but not as a Jew"⁸⁴ and, had, for example, previously been seen as a Crusader. It is not surprising that that figure had a big nose. In a caricatural representation, the mouth, nose, eyes or ears, for example, are drawn in excessively large or excessively small size in comparison to the rest of the face to achieve a caricatural - comical - effect. The word caricature therefore comes from Italian where "*caricare*" means exaggeration, among other things.⁸⁵

The representatives of the carnival group *De Vismooil'n* stated that they did not aim to make fun of the Jews, but of themselves. They took a Sabbatical year in order to fund their empty group cash box.⁸⁶ "Inspired by the concept of that Sabbath year, we came up with the idea of putting Jews on our float. Not to ridicule the religion, but carnival is simply a celebration of caricature. We thought that was funny, to appear as pink Jews in the parade with the money chest in which to keep our saved-up money."⁸⁷ They placed mice around a money chest - "our mice that are saving for next year" - which, however, were perceived as rats. Of course, it cannot be ruled out that stereotypes subconsciously played a role in associating Jews with money and mice and rats, and perhaps even the reference to the iconography of the Nazis from the time of *Der Stürmer*. In this sense, the whole of the float unmistakably conveys anti-Semitic stereotypes. On the other hand, the contextual elements and the explanation given by those responsible at *De Vismooil'n* lead to the conclusion that there can be no question of malicious intent in the legal sense of the term.

Unia's statement that there was no particular purpose or malicious intent, and that therefore the constitutive elements of the incitement crime were not met, was also followed in the legal comments that appeared in the aftermath of Aalst Carnival.⁸⁸ The Flemish Minister for Culture, Sven Gatz, also stated in the Committee on Culture, Youth, Sport and Media that "there was not necessarily any malicious intent, and I believe there was none."⁸⁹

⁸³ 'Dat de Joden afgebeeld worden met de verfoeide haakneus, komt door de recyclage van koppen', www.standaard.be (7 March 2019).

⁸⁴ 'Dat de Joden afgebeeld worden met de verfoeide haakneus, komt door de recyclage van koppen', www.standaard.be (7 March 2019).

⁸⁵ *Caricature and Cartoon*, www.britannica.com/art/caricature-and-cartoon and *CARTOONING FOR PEACE, Tous Migrants! Livret pédagogique de l'exposition*, Paris, Cartooning For Peace, 2018, 14 (www.cartooningforpeace.org/wp-content/uploads/2018/01/LIVRET-TM.pdf).

⁸⁶ 'Dat de Joden afgebeeld worden met de verfoeide haakneus, komt door de recyclage van koppen', www.standaard.be (7 March 2019).

⁸⁷ *Joodse gemeenschap legt klacht neer tegen Aalsterse carnavalsgroep: "Grens overschreden"*, www.demorgen.be (4 March 2019).

⁸⁸ K. LEMMENS, "Carnaval is bij uitstek een feest waarbij burgers stoom moeten kunnen aflaten", www.knack.be/nieuws/auteurs/koen-lemmens-ku-leuven-vub-689.html and L. NEELS, "Na carnavalsrel in Aalst: praalwagen is misplaatst en oerdom, maar niet strafbaar", <https://www.vrt.be/vrtnws/nl/2019/03/06/aalsterse-sabbat-praalwagen-misplaatst-of-niet/>. See also Dirk Voorhoof cited in the article *Antisemitisch of carnavalesk?*, www.standaard.be (6 March 2019) who deemed the likelihood that this company would result in legal action or a criminal conviction "minimal if not inexistent".

⁸⁹ *Request for justification of the recognition of Aalst Carnival as intangible cultural heritage from Marius Meremans to Minister Sven Gatz*, Culture, Youth, Sport and Media Committee 28 March 2019, question 891 (2018-2019).



A float at the German Mainz Carnival in 1939.

According to Unia, the absence of a particular purpose or malicious intent legally distinguishes the float of *De Vismooil'n* from certain floats that were driven around German cities under the Nazi regime. Under the Nazi regime, the carnival processions were instrumentalised and staged⁹⁰ by the government. The National Socialist regime exerted pressure to include certain floats with anti-Semitic representations in parades.⁹¹ There was clearly a malicious intention here. The Nazi regime instrumentalised the carnival processions and deliberately used stereotyped images of Jews, which were magnified, with a view to strengthening its hate propaganda and sowing anti-Semitic hatred among the German population.

⁹⁰ C. DIETMAR en M. LEIFELD, *Alaaf und Heil Hitler. Karneval im Dritten Reich*, Herbig, München, 2010, 165.

⁹¹ C. DIETMAR en M. LEIFELD, *Alaaf und Heil Hitler. Karneval im Dritten Reich*, Herbig, München, 2010, 125.

4.3 Distribution ban

It is a criminal offense in Belgium to disseminate racist ideas in public (Article 21 of the Anti-Racism Act). This provision only appears in the Anti-Racism Act.

4.3.1 Tangible components

By racist ideas we mean ideas that are based on racial superiority or racial hatred. During the parliamentary proceedings, reference was made to the "pseudo-scientific discourse on racial hatred" that must be distinguished from "objective scientific research." The aim of the discourse must be to foster hatred towards a group of people and to justify the establishment of a policy that is discriminating against them or geared toward segregation.⁹²

The prohibition of dissemination therefore focuses on a limited group of expressions, namely ideas that assume that there are different human races that can be classified according to superiority and inferiority and to which hateful implications are attached. The ideas have a certain intellectualistic pretension, but that does not hold up once they are tested against scientific norms.⁹³

The dissemination of the ideas must be done in public, but is not linked to a specific medium. General publicity must be given to the ideas, which means that they must be widely disseminated.⁹⁴

Finally, it can be deduced from parliamentary proceedings that the intention is not to penalise the dissemination of *other people's* ideas to the general public, but rather to penalise the publication, expression or advocacy of ideas as an intellectual author.⁹⁵ *"The person who, by purely material acts, restricts himself to disseminating ideas formulated by someone else based on racial superiority or racial hatred, can possibly be held criminally liable as an accomplice, but then within the strict limits of the principle of the chain of liability in accordance with Article 25, paragraph 2, of the Constitution."*⁹⁶

4.3.2 Moral component

For a crime to be considered as having occurred, a particular purpose must be demonstrated, namely *"that the dissemination of the ideas in question aims to foster hatred towards a group of people and to justify the establishment of policies that discriminate against or segregate them."*⁹⁷

⁹² Bill amending the law of 30 July 1981, criminalising certain acts inspired by racism and xenophobia, Parl.Doc. Lower House 19 March 2007, no. 51-2720/009, 63.

⁹³ J. VRIELINK and D. DE PRINS, "Die Wiederkehr des Gleichen. Het Grondwettelijk Hof en de (federale) discriminatiewetgeving", TBP 2009, 604.

⁹⁴ Const. Ct. 12 February 2009, no. 17/2009, recital B.74.4. See also J. VRIELINK and D. DE PRINS, "Die Wiederkehr des Gleichen. Het Grondwettelijk Hof en de (federale) discriminatiewetgeving", TBP 2009, 605.

⁹⁵ Bill amending the law of 30 July 1981, criminalising certain acts inspired by racism and xenophobia, Parl.Doc. Lower House 19 March 2007, no. 51-2720/009, 62-63.

⁹⁶ Bill amending the law of 30 July 1981, criminalising certain acts inspired by racism and xenophobia, Parl.Doc. Lower House 19 March 2007, no. 51-2720/009, 62-63.

⁹⁷ Const. Ct. 12 February 2009, no. 17/2009, recital B.74.4. and B.74.5.

The ideas must have a contemptuous or hateful nature and must express the fundamental inferiority of a group.⁹⁸ Both conditions - referring to racial hatred and racial superiority - are cumulative: the expressions must be both contemptuous or hateful and express the fundamental inferiority of a group.⁹⁹ Expressions of science and art fall outside the distribution ban.¹⁰⁰

*In the context of incitement crime, reference has already been made to a complaint against the comic strip album **Kuifje in Afrika** (Tintin au Congo; Tintin in the Congo) which was based, among other things, on the dissemination prohibition from Article 21 of the Anti-Racism Act. As stated, the court also ruled with regard to the prohibition of distribution that there was no question of a particular purpose. The intention was not to disseminate ideas with the aim of fostering hatred towards a group and justifying a policy discriminating against them or geared towards segregation.¹⁰¹*

4.3.3 Application to carnival

Above, in the context of the discussion of the moral element in the incitement crime, it was explained how the float and the anti-Semitic representations came about. It also follows, according to Unia, that it is highly doubtful that the carnivalists intended to propagate pseudo-scientific ideas with the aim of stimulating hatred towards a group of people and justifying the establishment of a policy that is discriminatory or geared towards segregation. Such a purpose is, in fact, at odds with the intention of carnival.

4.4 Insult

It is punishable in Belgium to insult someone in public by acts, writings, pictures or emblems (Article 448, paragraph 1, Criminal Code).

4.4.1 Tangible components

In Belgium, insulting a group is not punishable, only insulting *an individual* is. This is, for example, different in the Netherlands where it is also punishable to publicly deliberately insult a group of people because of their race, their religion or belief, their heterosexual or homosexual orientation or their physical, psychological or mental disability (group insult - article 137c Penal Code).¹⁰²

Insults are allegations which express a judgement of the targeted person without that person being charged with a specific crime.¹⁰³ In order to be punishable, they must be done in public through acts, writings, pictures or emblems and must be directed against a person.

⁹⁸ Const. Ct. 12 February 2009, no. 17/2009, recital B.74.5.

⁹⁹ K. LEMMENS and J. VRIELINK, "De censuur kan nooit worden ingevoerd: vrijheid van meningsuiting en hate speech als uitdagingen voor het EHRM en de Belgische rechtspraak", in S. RUTTEN, E. RAMAKERS and M. LENAERTS (eds.), *Recht in een multiculturele samenleving*, Antwerp, Intersentia, 2018, 155.

¹⁰⁰ Const. Ct. 12 February 2009, no. 17/2009, recital B.74.5.

¹⁰¹ Crim. Ct. Brussels 10 February 2012, www.unia.be and Brussels 28 November 2012, unpublished.

¹⁰² A.J. NIEUWENHUIS, *Over de grens van de vrijheid van meningsuiting*, Nijmegen, Ars Aequi Libri, 2011, 252.

¹⁰³ A. DE NAUW, *Inleiding tot het bijzonder strafrecht*, Mechelen, Kluwer, 2005, 225.

This concerns a complaint crime which means that only the person who claims to be offended can submit a complaint (Article 450 of the Criminal Code). A penalty can be applied by the court if the insult was based on a hate motive (Article 453bis Criminal Code).

4.4.2 Moral component

Insults are only punishable when there is malicious intent.¹⁰⁴ The offender must therefore have the intention of causing malicious damage to the person in question.¹⁰⁵

4.4.3 Application to carnival

In Belgium, group insults are not punishable, only insults aimed at an individual, at a person. The insult must be made with malicious intent and only the insulted person can submit a complaint.

It is clear that the carnivalists did not aim to target anyone in particular, so that the conditions for an insult crime were not met.

4.5 Negationism

In Belgium, it is a criminal offense to publicly deny, grossly minimize, attempt to justify or condone the genocide committed by the German National Socialist regime during the Second World War (Article 1, paragraph 1 of the Negationism Act).

4.5.1 Tangible components

The Negationism Act only applies to the genocide committed by the German National Socialist regime during the Second World War. It is punishable to publicly deny, grossly minimise, attempt to justify or condone this.

Denial means to deny the existence of the genocide in its entirety. Condoning implies approval of the genocide referred to and endorses Nazi ideology. Gross minimisation means that the intended genocide is minimised in a very rude and offensive manner. By attempting to justify the Holocaust, one seeks to attempt, by rewriting the historical data, to present the intended genocide in an acceptable manner and thus to endorse the Nazi ideology.¹⁰⁶

¹⁰⁴ Crim. Ct. Neufchâteau 13 May 1993, JLMB 1993, 965.

¹⁰⁵ P. MAGNIEN, "Les atteintes portées à l'honneur et à la considération des personnes", in M-A. BEERNAERT, H-D. BOSLY, C-E. CLESSE, A. DELANNAY, I. DE LA SERNA, M. DE RUE, C. DE VALKENEER, F. LUGENTZ, P. MAGNIEN, N. VAN DER ECKEN, D. VANDERMEERSCH and I. WATTIER, *Les infractions. Volume 2: Les infractions contre les personnes*, Brussels, Larcier, 2010, 801.

¹⁰⁶ Const. Ct. 12 July 1996, no. 45/1996, recital B.7.9.

The Anti-Racism Act was recently extended, which can also make the denial, gross minimisation, attempt to justify or condoning (certain) other genocides punishable.¹⁰⁷ The new criminalisation based on article 20, 5 ° Anti-Racism Act concerns:

Anyone who, in one of the circumstances referred to in Article 444 of the Criminal Code, denies, grossly minimizes, attempts to justify or condones acts corresponding to a crime of genocide, a crime against humanity or a war crime as referred to in Article 136quater of the Criminal Code, and as such established by a final decision of an international court, who knows or could be presumed to know that this behaviour could expose either a person or a group, a community or its members to discrimination, hatred or violence because of one of the protected criteria or religion, within the meaning of Article 1 (3) of the Council of the European Union Framework Decision of 28 November 2008 on combating certain forms and expressions of racism and xenophobia through criminal law, even outside of the domains referred to in Article 5.

4.5.2 Moral component

No particular purpose or malicious intent is included in the Negationism Act. In this context, the Constitutional Court ruled that the acts punishable by the Negationism Act “*can hardly be considered to have occurred without, albeit indirectly, the intention of rehabilitating a criminal and antidemocratic ideology and thereby intending to seriously insult one or more categories of people.*”¹⁰⁸

4.5.3 Application to carnival

The float of *De Vismooil'n* contains no reference to the genocide committed by the German National Socialist regime during the Second World War. It is also arguable, according to Unia, that carnivalists would want to rehabilitate a criminal ideology that is hostile to democracy, thereby seriously insulting certain individuals or groups.

¹⁰⁷ Article 20, 5° ADA was inserted by article 115 of the Law of 5 May 2019 setting out various clauses regarding criminal matters and religious services, and amending the Law of 28 May 2002 on euthanasia and the Social Penal Code, Belgian Official Gazette 24 May 2019, 50.023.

¹⁰⁸ Const. Ct. 12 July 1996, no. 45/1996, recital B.7.10.

5 Conclusion and recommendations of Unia

The tradition of carnival (and other folk festivals) is a very ancient one. Carnival is an originally popular event that aimed to disrupt existing power relations - and the associated social rules and conventions - and even to reverse them. For a few days a Prince Carnival, elected by the people, would be in charge and the formal rulers would have to step aside. The purpose of carnival was to offer the people a social outlet through which tensions and conflicts could be released. Protest and criticism were expressed through humour and standards about proper behaviour were suspended. For just a little while, because soon - for example after three days - everything had to get back to the old routine.¹⁰⁹

The function of carnival as a reversal ritual has now largely been lost for various reasons: freedom of expression was not self-evident in the past and it is now, power is no longer exercised despotically, the social hierarchy has been largely democratised ... Only the event itself remains, and although it does still have the function of building a local community, the emphasis is primarily on fun and entertainment.¹¹⁰

Carnival is still a **local and temporary event** in which excesses are *briefly* tolerated and then only in a *certain place*. The use of grotesque images and stereotypical exaggerations - both inextricably linked to carnival - must therefore always be placed in that specific context.¹¹¹ What can be tolerated during carnival cannot necessarily be tolerated outside of it.

The fact that the tradition of carnival goes far back in time, and is a local and temporary event, does not mean that others in society may not experience (elements from) that tradition as **offensive** and may question it.

*"This is dehumanizing and hurtful to the Jewish community. It may not have been meant to cause offence, but this contributes to anti-Semitism. It is giving anti-Semitism legitimacy in the form of entertainment."*¹¹²

In other words, the question is not whether you can make fun of everything, but how you can make fun of everything.

Whenever certain cultural - or other - traditions are questioned, such as, for example, Aalst Carnival or Zwarte Piet, *"then amazement and dismay alternate with astonishment at the protest and reversing accusations, legal complaints and demands for apologies."*¹¹³

The analysis of the legal framework presented above makes it clear that a legal answer is not helpful here. The legislation - followed by case law - attaches great importance to the freedom of expression that serves as an important foundation and guarantee in a democratic society with a view to the creation of an open, tolerant and pluralistic society. According to case law, it is perfectly permissible to use one's freedom of expression to shock, worry or hurt. According to Unia, followed by legal commentators, with their float, the carnivalists of *De Vismooil'n* did not exceed the legal limits of freedom of expression, as laid down in European and Belgian legislation and case law. Nor does holding on to diametrically opposed positions and viewpoints offer any solution. From the outset, Unia has called for an open and constructive dialogue and has taken steps to start that dialogue.

¹⁰⁹ M. REYNEBEAU, "In het carnaval heeft de macht gewonnen", www.standaard.be/cnt/dmf20190308_04241187.

¹¹⁰ M. REYNEBEAU, "In het carnaval heeft de macht gewonnen", www.standaard.be/cnt/dmf20190308_04241187.

¹¹¹ Request for justification of the recognition of Aalst Carnaval as intangible cultural heritage from Marius Meremans to Minister Sven Gatz, Culture, Youth, Sport and Media Committee, 28 March 2019, question 891 (2018-2019).

¹¹² According to Christophe Busch in the article Antisemitisch of carnavalesk?, www.standaard.be (6 March 2019).

¹¹³ M. REYNEBEAU, "In het carnaval heeft de macht gewonnen", www.standaard.be/cnt/dmf20190308_04241187.

Therefore we do not believe that legal proceedings can resolve this social issue. Whether we are talking about complaints against carnivalists, or about proceedings against individuals or groups who want to raise awareness or draw attention to the stigmatising and stereotypical nature of certain popular expressions, such as the blackfaces (as seen at the Deux-Acres (Lessines) and Ath popular festivals). These protests also come under the freedom of expression and can also be shocking, disturbing or hurtful.

Unia notes that carnival can be traced back to a long **tradition** in which - temporarily and locally - everyone and everyone can be marked. At the same time, Unia notes that groups in society are increasingly taking offense at the unbridled use of stereotypes that they may experience as very hurtful and unnecessarily offensive.

Whoever takes the right to make fun of everything and everyone must also accept that criticism is bound to arise from it.

In addition, it is important to realise that in an age of ubiquitous fast and indiscriminate **social media**, images can be taken out of their - temporary and local - context and quickly misunderstood. Whereas in the past the message of carnival was limited to the carnivalists and the local inhabitants and spectators along the route of the carnival parade, that is no longer the case. From now on social media will scrutinise every local carnival procession with a magnifying glass and images will be sent around the world to viewers who do not necessarily have all the explanation and background knowledge.¹¹⁴ The comments that follow - and they will always be there thanks to social media - can be brutal. One should be fully aware of this.

And it could be anticipated.

According to Unia, it must be possible to continue to experience the tradition of carnival with respect for a changing society and without lapsing into preventive censorship or self-censorship. Carnival derives its individuality precisely from questioning existing norms and values. Cultural and religious differences must not automatically restrict the right to free expression on which carnival is based.

That is why Unia first of all recommends that dialogue should continue - in the first place between those directly involved - not to question traditions or to censor expressions that fall within the legal framework of freedom of expression, but to get to know and understand each other's sensitivities, vulnerabilities and positions.

For example, the mayor of **Ath** had a meeting with the *Bruxelles Panthères* collective a few days before the *Ducasse d'Ath* in 2019. Such a conversation can contribute to mutual understanding. On Sunday, '*le sauvage d'Ath*' handed over his chains to the mayor (for the first time), leaving room for reflection in the future ... Although these are just the first steps - and the spokesperson for the collective *Bruxelles Panthères* was still formally arrested, a banner was removed ... - it is nevertheless an important first signal.

In particular, with regard to **Aalst** Carnival, Unia has been able to observe in practice how difficult it can sometimes be for those involved to enter into direct dialogue with each other. Sometimes there is a great distance to be bridged and the sensitivities are very strong. There is also a lot of ignorance; for example, about the danger of stereotypical representations, about the genocide, about anti-Semitism, about the tradition of Aalst Carnival...

Nevertheless, according to Unia, there is little or no benefit in the people involved continuing to rigidly hold onto to their own views. This will only lead to more **polarisation** and may cause subsequent editions of carnival to become more and more provocative and to cause more and more polemics. Nobody stands to gain from this. Unia therefore calls on each party involved to look at things from the point of view of the others. Only with the necessary **empathy**, and the necessary understanding on both sides, will it be possible to resolve the dispute.

We also need to express some concern about the direction that the carnival issue might take. Even unintentional caricatures, which cause a lot of commotion, should not lead to threats. The very harsh reactions that the Carnival group De Vismooil'n received have hit them hard.

¹¹⁴ www.facebook.com/BertKruismans/posts/deze-maand-schreef-ik-een-column-voor-de-juristenkrant-over-jawel-aalst-carnaval/2456145801119393/

In addition, according to Unia, education, youth movements, civil society ... should be encouraged to work on stereotypes in society and more specifically those used during carnival.

There are many examples of such **educational materials** that can provide inspiration.¹¹⁵

Finally, according to Unia, there could be awareness raising in order to make carnival more inclusive. Local authorities could, for example, launch a campaign about this.

Society is constantly **evolving**. Along with social evolutions, traditions are also subject to change. Traditions originally began when times were different, and at some point, it must be taken into account that they have changed. Only in this way can tradition continue in the future and everyone can enjoy it. What was acceptable in the past is not necessarily acceptable today. They evolve, they adapt, they reinvent themselves on the background of the evolution of society, and the standards that apply to it and people and groups that are part of it.

Traditions are strongly embedded in the local community and they change as the result of **interaction** with that local community. It even makes little sense to try to impose or direct those changes from outside by issuing rules, norms, prohibitions ... It would not only completely ignore the origin and character of such traditions, but would also be doomed to fail. Perhaps imposing rules would only lead to more offensive stereotypical representations and would ultimately be extremely counterproductive. On the other hand, the carnival groups, and the organisers, cannot remain blind to the changing sensitivities, the consequences that stereotypical representations have for those involved, the increasing criticisms ... whether or not they are justified. They have every interest in taking this into account and in making carnival **a truly inclusive celebration**. In this way, they can safeguard the future of a carnival that evolves along with the changing spirit of the times. And they can prevent restrictions from being imposed from above.

The essence of carnival is that it brings together different communities. Carnival has a **community-building** character and can promote integration. It should certainly be possible to involve new communities even more in the carnival tradition. It is clear that a balance will have to be struck between traditional carnivalists and newcomers, including the way in which cultural and religious sensitivities can find their place within carnival. It is clear that this is a process that can only take place step by step and that will require efforts from both sides.

Unia is certainly hopeful that this text and the recommendations formulated above can make a positive contribution to this process.

¹¹⁵ A few examples are: www.kuleuven.be/thomas/page/carnaval/;
www.schooluitdekast.be/sites/default/files/methodiek/bijlage/louviertcarnavaleducatiefpakket.pdf;
www.enseignement.catholique.be/segec/fileadmin/DocsFede/FESec/religion/2018/INFORMATIONS-2017-12.pdf;
www.enseignement.catholique.be/segec/fileadmin/DocsFede/FESec/religion/2018/Informations%2018-03-30.pdf and
www.klascement.net/downloadbaar-lesmateriaal/57893/begin-bij-jezelf-dossier-over-stereotypen-and-vooroordelen/?previous.

Recommendations of Unia

When traditions, folk festivals, carnival processions, processions... convey, or are able to convey, images, representations, statements, characters... that shock, worry or hurt certain groups of the population (or part of them), whether or not belonging to a minority, Unia invites people to do following.

- To initiate, and maintain, a dialogue between all those involved with a view to getting to know and understand each other's sensitivities, vulnerabilities and points of view.
- Rethink traditions, folk festivals, carnival processions, processions... to make them evolve into inclusive events with respect for everyone. This must be done in close cooperation with the local communities concerned, which are responsible for safeguarding these events and their symbolic and collective significance, in order to maintain these traditions, which must remain alive and up to date.
- Schools, youth movements, civil society ... should be actively working on the impact of stereotypes in society, in particular in the context of carnival, traditions and popular festivals.
- Local authorities should take action and campaign for inclusive parties, carnival parades, parades...
- Judicial procedures can only be used as a last resort when there is a clear and conscious intention to incite discrimination, segregation, hatred or violence or when there are real and concrete threats of violence. In none of the files submitted to Unia (Aalst Carnival, Ducasse d'Ath, Ducasse de Deux-Acren (Lessines), Carnival of Malmédy, Grand feu de Liernu, etc.) have we been able to find circumstances that could justify legal proceedings.

Annex 1: Reply from Unia sent in response to reports

Dutch

Wij hebben uw melding over de editie van 2019 van Aalst Carnival, and meer bepaald over de praalwagens « Sabbatjaar 2019 » van de carnavalsgroep *De Vismooil'n*, goed ontvangen and danken u hiervoor.

Aalst Carnival staat sinds 2010 ingeschreven op de lijst van Immaterieel Cultureel Erfgoed van de Mensheid van UNESCO. Het staat vooral bekend voor het scherpe karakter van de thema's die worden gekozen. De nationale and internationale publieke figuren and evenementen die het nieuws van het afgelopen jaar hebben beheerst, worden door middel van bijtende spot, belachelijk gemaakt. Aalst Carnival laat op die manier niemand onbewogen.

Dit jaar kwamen er heel wat reacties over diverse praalwagens die meededen aan de stoet. Unia ontving meldingen over de praalwagen van de carnavalsgroep *De Vismooil'n*, maar ook over andere praalwagens met karikaturale afbeeldingen, zoals die van mensen met een zwarte huidskleur of homo's. Op de wagen van *De Vismooil'n* stonden reuzegrote, kartonnen karikaturen van orthodoxe Joden, omringd door zakken vol met geld. De manier waarop Joden werden afgebeeld and de link naar het geld verwijzen naar oude antisemitische stereotypen die men op verschillende tijdstippen in de geschiedenis heeft zien terugkomen. We begrijpen de verontwaardiging and de woede die dit bij de Joodse gemeenschap and ver daarbuiten heeft veroorzaakt.

Unia heeft dan ook onmiddellijk in deze zin publiekelijk geantwoord. Daarnaast brachten we de specifieke geest van zelfspot and satire in herinnering die carnival in het algemeen and Aalst Carnival in het bijzonder drijven. Aalst Carnival is voor de bevolking het middel bij uitstek om aan sociale and politieke kritiek te doen. Bovendien kan er, gelet op de uitleg die de carnavalsgroep zelf heeft gegeven, geen antisemitische intentie afgeleid worden in hoofde van de verantwoordelijken van *De Vismooil'n*. Dit deed ons concluderen dat de Anti-Racismewet niet werd geschonden.

Unia wenste het hier echter niet bij te laten and deed een voorstel om de verschillende partijen rond de tafel samen te brengen. We zijn van mening dat een directe uitwisseling tussen de betrokken partijen kan helpen om wederzijds begrip te vergroten and vooroordelen te overstijgen. De betrokkenen hebben hiermee ingestemd.

We hopen u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,

French

Nous avons bien reçu votre réaction au communiqué de Unia relatif à l'édition 2019 du Carnival d'Alost, et plus particulièrement concernant le char « Sabbatjaar 2019 » du groupe *De Vismooil'n*, et vous and remerciements.

Le Carnival d'Alost, inscrit sur la liste du Patrimoine immatériel de l'Humanité and 2010, est connu pour le caractère grinçant des thèmes de ses chars, qui tournent notamment and dérision et avec un humour féroce les personnalités nationales et internationales ou événements ayant fait l'actualité de l'année écoulée. Ce carnival ne laisse donc jamais indifférent.

Cette année, les réactions les plus virulentes ont porté, mais pas uniquement (certain.e.s, dont vous, avez souligné la présence parodique de personnages homosexuels, celle de chars caricaturant la population noire ou de personnes portant des habits caricaturant le KKK a également choqué) sur le char du groupe *De Vismooil'n* sur lequel figurent des personnages géants and carton-pâte caricaturant des juifs orthodoxes entourés de sacs d'argent. Cette représentation parodique de juifs et le lien à l'argent reproduit un stéréotype antisémite que l'on retrouve de tous temps au cours de l'Histoire, et nous comprenons l'émotion voire la colère et l'indignation que ces images rappelant d'autres temps ont suscité auprès de la population juive et au-delà.

Unia a immédiatement réagi publiquement dans ce sens, mais nous avons également tenu à rappeler l'esprit particulier d'autodérision et de satire qui anime les carnivals and général et le carnaval d'Alost and particulier, ce dernier constituant aussi un outil de critique sociale et politique. Par ailleurs, suite aux explications qui nous ont été fournies, l'on n'a pas pu relever d'intention antisémite dans le chef des responsables et concepteurs du char *De Vismooil'n*. Nous sommes donc arrivés à la conclusion qu'il n'y avait pas infraction à la loi Anti-Racisme.

Unia n'a cependant pas voulu and rester là et a donc fait la proposition de réunir les différentes parties autour de la table. Nous estimons and effet qu'un échange direct entre personnes se révèle souvent précieux lorsqu'il s'agit de dépasser les préjugés. Les différentes parties concernées ont marqué leur accord pour une rencontre.

Nous vous prions d'agréer l'assurance de nos meilleures salutations.

English

We have received your report on the 2019 edition of the Aalst Carnival, and more particularly on the "Sabbatjoor 2019" float of the *De Vismooil'n* group, and we thank you for it.

The Aalst Carnival, inscribed on UNESCO's list of Intangible Cultural Heritage of Humanity in 2010, is known for the gritty nature of the themes addressed by its floats, which make fun of national as well as international figures and events that have made the headlines of the past year with a devastating sense of humour. This carnival therefore never leaves anyone indifferent.

This year, the reactions focused, but not only (floats caricaturing the black population or homosexuals were also criticized), on the float of the *De Vismooil'n* group on which giant cardboard characters caricaturing Orthodox Jews surrounded by money bags appear. This depiction of Jews and the link to money reproduces an anti-Semitic stereotype that has been found throughout history, and we understand the indignation and even anger that these images have aroused among the Jewish population and beyond.

Unia immediately reacted publicly in this sense, but we also wanted to recall the particular sense of self-derision and satire that animates carnivals in general and the Aalst Carnival in particular, the latter also being a tool for social and political criticism. Moreover, following the explanations provided, there is no anti-Semitic intention on the part of those responsible for the *Vismooil'n*. We therefore concluded that there was no violation of the Anti-Racism Law.

However, Unia did not want to stop there and therefore made the proposal to bring the different parties around the table. We believe that a direct exchange between people is often valuable when it comes to overcoming prejudices. The various parties concerned agreed to a meeting.

Please accept the assurance of our best regards.

Annex 2: Letter from vzw Carnavalist tot in de Kist and AKV De Vismooil'n to the Forum of Jewish Organisations

Dear Sir or Madam,

With this letter, we, as AKV *De Vismooil'n* and vzw Carnavalist Tot In De Kist, would like to provide a joint response to the complaints, comments and questions regarding *De Vismooil'n*'s participation in the 91st carnival parade in Aalst on this past Sunday March 3 and Monday, March 4.

Vzw Carnavalist Tot In De Kist is the umbrella association that assists the officially registered and a number of informal carnival groups, acts as a liaison with the city of Aalst and also works on themes such as safety, the environment, etc.

AKV *De Vismooil'n* was aware of the theme of "*Sabbatjoor*" (sabbatical year). In order to understand that, we would first like to explain the carnival parade. It has 3 consecutive parts: part A, part B and part C. Each year the groups from these parts move on to the next part. It goes without saying that the farther you are as a group in the parade, the later you did part and the more lighting will be required. It is a general trend in Aalst that the carnival groups save up for the year in which they will appear in Part C. "*Sabbatjoor*" (a sabbatical year, a commonly used word to indicate that people are taking a break) therefore refers to saving the money to be able to show off with a more impressive and brightly lit float in the 2020 parade.

After the theme is chosen, consideration is given to how it will be depicted. Anyone who hears the word Sabbath will immediately make the link with the Jewish community. A quick search on the internet and one finds a typical caricature that can serve as a basis for further elaboration. We would like it to be perfectly clear that no connection whatsoever was made to disgusting and degrading German propaganda! In order to save money, we searched among the materials of other carnival groups for heads that had already been used in recent years and which could be reworked into the caricature with the typical headgear and sidecurls. If the heads bear any resemblance to the heads that appeared on floats or other publications that were used as German Nazi propaganda, that is a hugely unfortunate coincidence. The rats on the wagon are also based on a stupid and foolish coincidence. They were supposed to be mice, but as we were unable to find mice, we used rats. The mouse itself has nothing to do with our caricature of a Jew, but the word (*mu*is) rhymed with "money chest" (*kluis*) and was featured in the parade song that is part of the show for the spectators. At no time was the link made to the Jews who were depicted as rats in Nazi caricatures.

As you see, everything is based on a terrible misunderstanding.

De Vismooil'n, as well as vzw Carnavalist Tot In De Kist, would like to apologise for the fact that people felt hurt. We can very well understand that the external characteristics give rise to negative memories and traumas. We understand very well the sadness, the powerlessness and the anger. The similarity to a specific float used by the German Nazi regime is based on an extreme and totally unintended coincidence.

However, we cannot apologise for the fact that Jews are portrayed as caricatures or for attempting to use humour to portray a certain theme, a certain event. An image is always the magnification of a certain situation, person or event. Aalst carnival never intends to hurt. Carnival groups have a certain self-censorship, and always seek to tread a very fine line, and can often be very caustic. Aalst people are highly chauvinistic. Aalst people are critical and often think in terms of extremes: white or black, grey does not exist. That is ingrained. Moreover, people from Aalst are highly adept at complaining and pestering each other, but if anyone dares to threaten the Aalst identity, then quite often there will be a massive, collective response. When someone from Aalst is told that something is not allowed in things such as humour and, more specifically, carnival, within traditions or specific customs, then you can be assured that that is exactly what will happen and it will probably even be magnified.

Carnival Aalst is a party that brings people together. We complain about each other, we criticize each other very much, but with carnival that often disappears and there are no more class differences. The farmer and the worker party with the lawyer or the director. Carnival is the release of all stress, the release of worries. Carnival is the reversal of reality. Carnival is laughing and magnifying facts, events, situations that are not allowed throughout the rest of the year. Everything must be understood within the context and spirit of carnival. Moreover, a person from Aalst cannot be censored, but he does understand that a specific depiction was used in this case, which inadvertently caused a very serious trauma to emerge.

In a conversation with Unia, we clearly noticed that your reaction mainly concerned the portrayal and the link with a float of German Nazi propaganda. In the meantime, this complaint has reached extreme proportions, with carnival and the good name of our city also coming under international pressure. Without clearly knowing what it is about, the national and international press has wrongly blown matters out of proportion, such that almost irreparable damage has been done, unjustified damage. Out of ignorance and the general acceptance of press releases, the European Commission is calling for an investigation, international pressure is being applied and UNESCO wants to scrap Aalst carnival from the list of intangible heritage. So many people and organisations (such as UNESCO and the European Commission) have been involved in the debate, which is no longer just about that one unintended similarity, but in the meantime also about the soul of Aalst carnival and the imposition of censorship. There is a very strong reaction in the city.

The members of *De Vismooil'n* are also receiving personal hate messages and death threats from all over the world, whereby personal data, family situations and photos are being shared on international websites. The mayor of Aalst has also received such hate mails.

We hope that you will help us to stop national and international criticism, attacks, hatred and threats towards both *De Vismooil'n* and our carnival and the city of Aalst. Aalst and its carnival are not racist, anti-Semitic and certainly not hateful. Aalst carnival is a folk festival about putting things into perspective, not taking oneself too seriously and sometimes very caustic humour.

In the conversation with Unia we could see that the Jewish community understands very well what carnival stands for and has itself a good sense of humour. We therefore suspect that you did not intend to impact that soul or the Aalst DNA, but merely wanted to point out to us the unintended and unfortunately hurtful similarity. We would like to respond to your suggestion to learn from history and therefore would like to visit the Dossin Kazerne in your presence. We would also like to invite you to Aalst to visit the carnival museum and the carnival workshops. In my opinion, all of this should be done without media and detached from politics, so that the process and reconciliation on both sides can succeed. We also wish to arrange the visit to Aalst ourselves. After the tour we invite you to join us for a meal and conversation. Perhaps afterwards a joint statement can be issued?

Everything is clearly based on an unintended and unfortunate misunderstanding, for which again, we would like to express our sincere apologies.

On behalf of *De Vismooil'n* and Vzw Carnavalist Tot In De Kist,

Geachte,

Met dit schrijven wensen wij als AKV *De Vismooil'n* and vzw Carnavalist Tot In De Kist een gezamenlijk antwoord te geven op de klachten, opmerkingen and vragen naar aanleiding van de deelname door *De Vismooil'n* aan de 91ste carnavalsstoet in Aalst op zondag 3 and maandag 4 March laatstleden.

Vzw Carnavalist Tot In De Kist is het overkoepelend verbond die de officieel ingeschreven and een aantal losse carnavalsgroepen bijstaat, een brugfunctie vervult naar de stad Aalst and tevens werkt rond thema's als veiligheid, milieu, enz.

AKV *De Vismooil'n* kende het thema "Sabbatjaar". Om dat te begrijpen wensen wij eerst de carnavalsstoet te ontleden. Die kent 3 opeenvolgende delen: deel A, deel B and deel C. Ieder jaar schuiven de groepen van zo'n deel door naar een volgend deel. Het spreekt voor zich dat hoe verder je plaats als groep is in de stoet, hoe later je uitrijdt

and hoe meer verlichting er moet aanwezig zijn. Het is een algemene tendens in Aalst dat de carnavalsgroepen sparen voor het jaar dat ze in deel C aantreden. "Sabbatjaar" (sabbatjaar, een veel gebruikt woord om aan te duiden dat men een pauze neemt) heeft dus betrekking op het sparen van het geld om tijdens de stoet van 2020 grootser and met verlichting te kunnen uitpakken.

Na de beslissing van het thema wordt nagedacht over de uitwerking. Wie aan de Sabbat denkt, legt dadelijk de link met de Joodse gemeenschap. Even googelen op internet and men vindt een typische karikatuur waarop is verder gewerkt. Laat het duidelijk zijn dat hierbij geen enkele link naar Duitse walgelijke and mensonterende propaganda is gelegd! Om geld uit te sparen werd bij andere carnavalsgroepen gezocht naar koppen die ook de voorbije jaren zijn gebruikt and waarbij het mogelijk was om deze te herwerken naar de karikatuur met het typische hoofddekseel and de pijpenkrullen. Als de koppen enige vergelijking kennen met koppen op wagens of andere publicaties die gebruikt werden als Duitse nazipropaganda, is dat een enorme spijtige toevalligheid. Ook de ratten op de wagen berusten op een stom and dwaas toeval. Het moesten muizen zijn, maar wegens niet te vinden werden het ratten. De muis heeft op zich niets te maken met onze karikatuur van een jood, maar het woord rijmde op "kluis" and kwam voor in het stoetliedje om de show naar de toeschouwers te animeren. Op geen enkel moment werd de link gelegd naar de Joden die als ratten werden afgebeeld in nazi-karikaturen.

U ziet dat alles op een verschrikkelijk misverstand berust.

De Vismooil'n, alsook vzw Carnavalist Tot In De Kist willen excuses aanbieden voor het feit dat men zich hierdoor gekwetst voelde. We kunnen zeer goed begrijpen dat de uiterlijke kenmerken negatieve herinneringen and trauma's doen ontstaan. We begrijpen zeer goed het verdriet, de onmacht and de kwaadheid. De gelijkenis op een specifieke wagen gebruikt door het Duitse naziregime, berust op een uiterst and totaal niet bedoelde toevalligheid.

We kunnen ons echter niet excuseren voor het feit dat Joden als karikaturen worden afgebeeld of omdat we humour trachten te gebruiken om een bepaald thema, een bepaalde gebeurtenis uit te beelden. Een uitbeelding is altijd het uitvergroten van een bepaalde situatie, persoon of gebeurtenis. Aalst carnival heeft nooit de intentie om te kwetsen. Carnavalsgroepen kennen een bepaalde zelfcensuur, gaan altijd een zeer dunne grens op zoeken and zijn vaak zeer scherp. Aalstenaars zijn zeer chauvinistisch. Aalstenaars zijn kritisch and kennen vaak uitersten: wit of zwart, grijs bestaat niet. Dat zit ingebakken. Aalstenaars zijn bovendien krakken in zagen and op elkaars kap zitten, maar raak aan de Aalsterse eigenheid, dan wordt heel vaak massaal and collectief aan één zeel getrokken. Wanneer men een Aalstenaar zegt dat iets niet mag binnen vormen als humour and meer bepaald carnival, binnen tradities of eigenheden, dan zal dit juist wel gebeuren and vaak nog uitvergroot.

Carnival Aalst is een feest dat bindt. We zagen op elkaar, hebben zeer veel kritiek op elkaar, echter met carnival valt dat vaak allemaal weg and zijn er geen klassenverschillen meer. De boer, arbeider feest met de advocaat of de directeur. Carnival is het ontladen van alle stress, het loslaten van bezorgdheden. Carnival is het omdraaien van de realiteit. Carnival is lachen and uitvergroten van feiten, gebeurtenissen, situaties, die niet worden toegelaten doorheen de rest van het jaar. Alles moet men begrijpen binnen de context and tijdsgeest van carnival. Bovendien laat een Aalstenaar zich niet censureren, maar hij begrijpt wel dat in deze een specifieke uitbeelding werd gebruikt die ongewild een zeer zwaar trauma liet bovendrijven.

In een gesprek met Unia hebben wij duidelijk gemerkt dat jullie reactie vooral betrekking had op de uitbeelding and de link met een praalwagen van Duitse nazipropaganda. Inmiddels heeft deze klacht extreme proporties aangenomen, waarbij carnival and de goede naam van onze stad ook internationaal in opspraak kwam. Zonder duidelijk te weten waarover het gaat heeft de nationale and internationale pers de zaken foutief uitvergroot, dat quasi onherstelbare schade is toegebracht, onterechte schade. Uit onwetendheid and het algemeen aannemen van persberichten wenst de Europese commissie een onderzoek, internationale druk wordt gebruikt and UNESCO wil Aalst carnival schrappen als immaterieel erfgoed. Zoveel mensen and organisaties (zoals UNESCO and de Europese Commissie) hebben zich in het debat gemengd, waarbij het helemaal niet meer alleen gaat over die ene ongewilde gelijkenis, maar ondertussen ook over de ziel van Aalst carnival and het onmogelijk opleggen van censuur. Daar wordt zeer hard op gereageerd in de stad.

Ook krijgen de leden van *De Vismooil'n* persoonlijke haatberichten én doodsbedreigingen van over de hele wereld, waarbij persoonsgegevens, gezinssituaties and foto's worden gedeeld op internationale websites. Ook de Aalsterse burgemeester heeft zulke haatmails ontvangen.

We hopen dat jullie ons willen helpen de nationale and internationale kritiek, de aanvallen, de haat and bedreigingen naar zowel *De Vismooil'n*, als onze carnival and de stad Aalst, een halt toe te roepen. Aalst and zijn carnival is niet racistisch, antisemitisch and al zeker niet haatdragend. Aalst carnival is een volksfeest van relativeren, zelfrelativering and van soms zeer scherpe humour.

In het gesprek met Unia merkten wij dat de Joodse gemeenschap zeer goed begrijpt wat carnival betekent and zelf een fijne humour kent. Wij vermoeden dan ook dat jullie niet de intentie hadden om die ziel of het Aalsters DNA te raken, maar ons enkel wilden wijzen op de ongewilde and spijtige kwetsende gelijkenis. We willen graag ingaan op jullie suggestie om te leren van de geschiedenis and willen daarom graag in jullie aanwezigheid een bezoek brengen aan de Dossinkazerne. We nodigen jullie daarop ook graag uit in Aalst om een bezoek te brengen aan het carnavalsmuseum én de carnavalswerkhallen. Dit alles moet inziens zonder media of weg van de politiek gebeuren, zodat het traject and de verzoening langs beide kanten kan slagen. We wensen het bezoek in Aalst ook zelf te verzorgen. Na de rondleiding nodigen we jullie uit om iets te eten and bij te praten. Achteraf kan misschien met een gezamenlijk statement naar buiten gekomen worden?

Alles berust duidelijk op een ongewild and ongelukkig misverstand, waarvoor nogmaals onze oprechte excuses.

Namens *De Vismooil'n* and Vzw Carnavalist Tot In De Kist,

Annex 3: Analysis based on the Sexism Act

It is often pointed out that misogynistic - sexist - imagery can be seen during the carnival parades. Unia is not legally competent for the Sexism Act (nor for the Gender Act). The Sexism Act is also not relevant from a legal point of view for the assessment of *De Vismooil's* float. For the sake of completeness, we nevertheless thought it could be useful to consider the Sexism Act. For the aforementioned reasons, we have done this as an Annex.

It is a criminal offense in Belgium to make any gesture or act in public that is apparently intended to express contempt for a person due to their gender, or for the same reason to regard them as inferior or to reduce them to their sexual dimension and which results in serious harm to the dignity of this person (Article 2 of the Sexism Act)).

Tangible components

Sexism concerns certain gestures or acts that are made in public. This refers not only to physical actions, but also to speech.¹¹⁶ These gestures or actions must clearly be intended to (1) express contempt for a person because of his or her gender, (2) to regard someone as inferior because of his or her gender, or (3) to reduce someone to their sexual dimension.

The gestures or actions must lead to a serious harm to the dignity of a person. Whether this will be the case depends on the specific context. It may be that the person against whom a gesture or action is made does not take offense, but that it is nevertheless a matter of prohibited sexism (and vice versa). In other words, sexist behaviour must be tested against an objective standard.¹¹⁷

The Sexism Act states that there must be a serious violation of the dignity of a person. The sexist behaviour must therefore be aimed at one or more specific (concrete) persons and not at an abstract group of people as a whole. *"The sexism crime also does not include situations in which the female gender is targeted as a whole, such as advertising appealing to macho behaviour, but the cases in which a specific person or group of people are involved."*¹¹⁸ However, sexism is not a complaint crime.¹¹⁹

Moral component

The Constitutional Court has determined that there must be a particular purpose, because in this way *"it can't be excluded that, if there is no such intentional element or effect with regard to a specific person, pamphlets, jokes, mocking statements, opinions - and, in particular, opinions regarding the different place and role within society of persons according to their gender -, advertising and any expression which, in the absence of the particular purpose requirement, falls under freedom of expression, could be punishable."*¹²⁰

¹¹⁶ T. VANDROMME, "Seksisme", *OSS* 2017, 9.

¹¹⁷ T. VANDROMME, "Seksisme", *OSS* 2017, 12-13.

¹¹⁸ Bill to combat sexism in public places and to amend the law of 10 May 2007 to combat discrimination between women and men in order to punish the act of discrimination, *Parl.Doc.* Lower House 28 March 2014, no. 53-3297/003, 11.

¹¹⁹ J. VRIELINK and S. VAN DYCK, "Seksismeverbod in de Strafwet", *NjW* 2015, 776.

¹²⁰ Const. Ct. 25 May 2016, no. 72/2016, recital B.23.4.

The perpetrator must intend to do harm to the victim and have the intention *"to express contempt towards a person or to regard them as inferior in the knowledge that the gesture or action may lead to an affront to that person's dignity."* Moreover, *"in order to be punishable, the gesture or act must have actually caused such a serious affront."*¹²¹

Application to carnival

Just as is the case with the crime of insult, sexism must relate to a specific person. In order for a crime to be considered as having occurred, a certain person would have to be targeted with a malicious intent on the grounds of his or her gender.

¹²¹ Const. Ct. 25 May 2016, no. 72/2016, recital B.23.2.

Carnival and the limits of freedom of expression

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