

The Belgian judiciary and the resistance: moral dilemmas during the Second World War

Jan Julia Zurn, researcher at the CegeSoma, recently defended her PhD thesis at Ghent University. She investigated how Belgian magistrates reacted when the German occupier demanded their collaboration in the repression of the resistance during the Second World War and how this affected both the magistrates and the resistance groups.

Despite the 'policy of the lesser evil' that the judiciary pursued during the first years of the occupation, the public prosecutor's office took a firm stand in this matter, which eventually even led to sabotage of its own judicial investigations. The magistrates were aware of their room for manoeuvre vis-à-vis the occupying forces and made use of it too.

In the interview below, the Jan Julia Zurn expounds on the main conclusions of her research.

You looked at the way the public prosecutor's office reacted to violence committed by resistance groups against collaborators. Why did the Belgian judiciary have to deal with these cases in the first place?

After the capitulation in 1940, the Belgian judiciary and police stayed in function. Like many other public institutions, the judiciary pursued a 'policy of the lesser evil'. This strategy was aimed at preserving the existing institutions in order to protect the Belgian population, but of course it also implied a certain collaboration with the occupying forces. One of the consequences of this policy was that the public prosecutor's office transferred legal documents to the German authorities.

Murder of A.J. Wekselman in his home. Brussels, 29 July 1943. (Collection CegeSoma)

Because the occupying forces introduced their own police forces and military courts, a division of tasks was created: German police services and courts would investigate and try all crimes directed against the occupier and the Belgian police and judiciary had to deal with all 'normal' crime. In practice, this division proved to be too simplistic, for example when it came to attacks on collaborators. Those attacks were violations of Belgian law and crimes committed by Belgians against Belgians, but the context of the occupation was clearly at the basis of this politically motivated violence. Nonetheless, the Germans wanted the Belgian police to track down the perpetrators because they lacked the manpower to do it themselves.

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How did the magistrates feel about this?

During the first two years of the occupation, this type of violence was rare. Resistance activities were mainly restricted to the underground press, sabotage and intelligence. From 1942 onwards, communist resistance groups in particular started to use more and more violence against both Germans and collaborators. In March 1943, on average one attack a day took place in Brussels. This was problematic for the Belgian judiciary because the violence threatened public order.

The magistrates realized that the occupying forces energetically fought the resistance and they were afraid to become a German instrument in this battle. That's why they asked for a guarantee that all suspects arrested by the Belgian police would be tried by Belgian courts. The German authorities did not grant this request, because they wanted to be able to punish resistance fighters themselves. Thus the public prosecutor's office was faced with a dilemma: they had to either hand over resistance members to the occupier or suspend the investigations and persecution in cases of attacks on collaborators and leave the politically motivated violence unpunished.

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So what choice did they make?

In Brussels, the public prosecutor's office suspended the investigations and persecution in cases of attacks on collaborators, but only after a few cases had gone wrong. The death of a resistance fighter who had initially been arrested by the Belgian police in January 1943 was a wake-up call for many magistrates. Eventually the chief prosecutor in Brussels became aware of the risks too and he ordered the public prosecutor to halt all investigations in cases of attacks on collaborators. His subordinates had been following this principle for a while already, which is striking within the normally strictly hierarchical functioning judiciary. The criminal police (*police judiciaire*) and magistrates on the crime scene got rid of evidence or wrote fake reports, all to make sure the German authorities would not get a hold of information that could help track down resistance members. They could not reconcile the handing over of citizens to the occupying forces with their patriotic views. In addition to this, there were legal and pragmatic reasons not to collaborate in search for resistance members. In December 1942, the Belgian government in exile amended the law on denunciation, which made magistrates and police officers potentially liable to post war punishment if they assisted in the tracking down of resistance members. Moreover, the judiciary wanted to secure its post war position, which would be severely weakened in the case of far-reaching collaboration with the occupying

forces.
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Murder of A.J. Wekselman in his home. Brussels, 29 July 1943. (Collection CegeSoma)

How did the German authorities react?

Of course, they noticed how the criminal police, which had a very good track record before the war, did not succeed in solving cases as far as attacks on collaborators were concerned. The German authorities put pressure on the judiciary to investigate these cases more thoroughly, but in the end they gave up on trying to use the Belgian judiciary and police in the fight against the resistance. Collaborationist parties continuously asked for a purge within the judiciary because it had a strong Belgiciste and liberal or catholic character. Some individual magistrates were suspended, but often their successors would continue the same policy. In 1944, the polarization even led to attacks on magistrates perpetrated by members of collaborationist parties. In the meanwhile, the occupying forces continued their fight against the resistance without the Belgian judiciary.