

Franz Rottensteiner

“For a few dollars more” - the strange case of Stanislaw Lem’s lawsuit against his agent Franz Rottensteiner

Since about twenty years have passed since the end of the lawsuit that Stanisław Lem instigated against me as his literary agent, it is about time to report for posterity the developments that led to it. Especially as Lem is now considered in Poland a sort of national saint.

Let’s start with a few anecdotes. In Lem’s untranslated novel *Wizja lokalna* Ijon Tichy becomes victim of a fraud when he accepts “in good faith” a castle in Switzerland as a gift. But this is just a scam that got him into troubles. That was Lem’s revenge on Switzerland, for he received once an invitation from that country, but apparently the Swiss refused to pay Lem’s expenses. That was at least the author’s explanation, for I have never seen his correspondence in this matter.

Another story: Once he told me that a Canadian was insisting on making him a gift of 5,000 dollars. But when I examined the man’s letter, it turned out that the whole thing was about something else. The man had written a script that had a marked similarity to *Solaris*, and requested that Lem allowed him its use. He wanted to be legally on the safe side without having to acknowledge the closeness to *Solaris*.

In Lem’s novel *Wizja lokalna* there is also a passage, that turned out to be of no importance in the case of Lem vs Rottensteiner lawsuit “In civil litigations the bank account is the important thing, for even if you have no chance to win, you can at least ruin your opponent financially by endless litigation.”

As Lem’s agent in the West (always with the exclusion of both German States, Switzerland and Austria) I charged him most of the time only a 10% of commission. Only if a foreign agency was involved – which was the case only in rare instances – I have added their commission to mine. Even in Japan, I have placed about a dozen books with Hayakawa without using a Japanese subagent. Only when Lem began acting stranger and stranger, did I raise my commission to 20%. He accepted this with reluctance, but felt robbed, because he obviously thought that 10% commission was a sort of natural law. He asked his own German agent who confirmed that a big German agency took only a 10% commission. But what he apparently didn’t suspect was the fact that this agency always worked with foreign sub-agents. In the U.S.A. for SF with the Virginia Kidd Agency which always charged 15%. In the unlikely case that a German author sold an SF novel directly in the U.S.A. through this agency, he would have had to pay a commission of 25%. That Lem suffered under the illusion that an agent’s commission would always be 10% shows only how little he knew of the publishing industry. His belief is so naive as if you would demand that mail to a foreign destination might not cost more than mail within your own country.

To put it briefly, I have always subsidized Lem, and Lem was always prepared to accept gifts. When Gales Research commissioned from Lem an essay for their new *Authors’ Autobiographical Series*, he took it for granted that I would translate it and wrote it at once when he learned that the fee offered was \$ 1,000. I did and then sold first serial rights for \$ 10,000 to *The New Yorker*. Lem’s editor at *The New Yorker* told me that in such cases it was their policy that, since translators are notoriously underpaid, the fee would be split 50:50 between author and translator. I said that I would leave it up to Lem to decide the translation fee. He found that \$ 1,000 was enough, i.e. I have at that time made him a gift of \$ 4,000 which he pocketed without saying thanks. He rather expressed his thanks later in his own inimitable way.

Poles sometimes have the curious belief that Lem was a bestseller in the U.S.A. and elsewhere. Now it is true that he had many translations, but aside from the Federal Republic of Germany (where he earned millions, more than in the rest of the world combined) he was nowhere in the West particularly successful. In the U.S.A. 3,000 to 4,000 copies seem to have been the limit for hardcovers (less for non-

SF books), and his paperback editions sold hardly better, only *Solaris* was a certain exception. His principal American publisher Helen and Kurt Wolff Books at Harcourt Brace cannot ever have earned any money with him. Avon failed dismally to turn him into a paperback success. Aside from a few books in Japan and Spain, hardly any Lem book went into a second edition. To find publishers for him was always extremely difficult, and, from a commercial point of view, hardly worth the effort.

I broke finally with Lem when Lem refused to sign a contract with Harcourt Brace, which I had negotiated. Concerned were a group of five titles: *Memoirs Found in a Bathtub*, *The Futurological Congress*, *The Cyberiad*, *The Star Diaries* and *The Investigation*. All those books had already been published by Harcourt at my suggestion under licenses from Continuum Books, the original hardcover publisher. When the licences expired, I wanted to re-sell all those books to Harcourt so that Lem would not have to share royalties with the hardcover publisher. I asked for an advance of \$ 25,000 for those five books which had sold only modestly in Harvest editions. The publisher countered with an offer of \$ 20,000 which the author accepted. Because of previous experiences, I insisted that Lem unequivocally give me in writing his acceptance of the counteroffer.

On July 7, 1994, Lem appeared in Vienna to collect personally various royalties in cash. After he had pocketed the money, he declared that he could not sign the contract with Harcourt since it would include film rights (which was not the case and in view of previous contracts for 15 books with Harcourt plainly ridiculous). I said to him, "Well, Mr. Lem, if the contract contains film rights, just take your pen and eliminate that clause." He replied that he did not understand contracts, but his "advisers" had told him not to sign, and that he now had an American agent and anyway wanted a more "dynamic" publisher than Harcourt. He brought with him a ready contract in which I should at once resign to represent him in the U.S.A. However, he declared himself willing to pay my commission for the advance of the contract with Harcourt. When it became clear that he would not change his mind, I finally resigned from being his agent in the U.S.A. Back in Cracow, he wrote to Harcourt that his new agent would continue the negotiations, which "I had begun". I learned a little later that he signed the contract practically unchanged, only for the advance that I had originally asked for: \$ 25,000.

After that, Lem for me was no longer trustworthy, and I decided to determinate our relationship. Curiously enough, even after Lem had started his lawsuit, he still wanted me to represent him elsewhere, albeit at a rate subsidizing him.

Lem's behaviour can hardly be called rational, for although he got a few dollars more advance for the contract, he got finally less money, for he paid two commissions, a total of \$ 5,000 to me (after I had demanded the difference to the new contract), and \$ 2,500 as an introductory gift to his American agency, through which he had made the deal, for which I had worked long and hard.

Finally, in *Science Fiction Studies*, vol. 23(1996) Lem wrote:

"In Response to Franz Rottensteiner"

Mr. F. Rottensteiner is no more my literary agent. There was a painful controversion (sic!) between us so I was finally forced to give the whole matter to two lawyers, experts in the domain of authors' rights. They advise me to prosecute an action [. . .] The main problem which arose had been the curious idea of my ex-agent to receive money from US agreement, however, he has done nothing and has not underwritten it (all work was done by my new agent, Mr. Gotler). I am incapable of contradicting in detail all broadsides from Mr. Rottensteiner, since the case must be solved by the law courts in Austria.

That was a blatant lie, for I had done everything necessary, most important, I had terminated the old contracts with Continuum Books. Without that, an agreement with Harcourt would have been impossible. There existed a printed contract ready to be signed—only the author refused to sign it under some pretext. All he wanted was a few dollars more.

Gotler of Renaissance, by the way, is a film agent who was hardly interested in the *peanuts* that book sales of Lem rights would have earned him, and after my time until Lem's death in 2006, there appeared in English only some licence editions under contracts that I had made, but no new translations of Lem books.

After some manoeuvres, Lem sent me a statement of his lawyer that I should sign at once, and if refused, his lawyer had already an order to sue me. In it I should acknowledge, among others, that the agency contract had already ended in 1994 (although there existed 1995 contracts signed by Lem himself), and:

6. I declare expressly that I will in no way whatsoever use or exploit letters written by Lem, whether addressed to me or another person.

7. I furthermore declare that I will not insult Mr. Stanisław Lem in any way whatsoever and make assertions about Mr. Stanisław or his relationship to me only based on facts.

8. In the case of an infringement of any of the obligations listed in this document, I expressly agree to pay Mr. Stanisław Lem penalties in the amount of ATS 500,000 [then about \$ 50,000] and I confirm that those penalties shall not be subject to a judicial right of moderation.

There was of course no idea that I would sign such a ludicrous document, and everything took its course at the Trade Court in Vienna, lasted for a period of 5 years, at a litigation value of ATS 730,000, and ended that Lem lost in all points.

Lem had claimed that the contract that I had negotiated was totally unacceptable. I had saved the presentation of his letter, in which he accepted the \$ 20,000 advance, until the end. In this letter, Lem had also formulated his highly original ideas on taxation, and when the (female) judge came to read this passage, she started to laugh, and I was sure that we had won.

Unfortunately, Austria civil law provides not for damages, you get only compensated for your costs, but not for the time lost and the uncertainty. Lem did not contest the verdict of the court, he paid up at once, he didn't follow the advice in *Wizja lokalna* to ruin his opponent by endless litigation.

Lem's briefs to the court contained some pearls of unwitting humour and were often in blatant opposition to the documents presented by him. For instance, he declared the original contract to be totally unacceptable, but presented (without necessity) a letter of his American agency in which his agent demanded only a few "minor changes". That was a chutzpah - or a sign of confusion.

The main point of his lawsuit concerned his letters, valued at ATS 500,000. I had written him, since his letter had no more value for me, that I was considering to donate them to *Zakład Narodowy im. Ossolińskich*, a reputable library in Wrocław and a repository of the correspondence of eminent Poles. That would have been very generous of me, for I could have sold them.

My letter exchange with Lem from 1969-1994 contains most likely the closest information about Lem's writings in that period and his success in the world, for after all I had arranged for some 300 contracts in the West and was to a large extent involved with his publication in the Federal Republic of Germany, and without me he would not have been published by the leading literary publishing group Insel/Suhrkamp. This letter exchange would be of great value to Polish literary historians, but apparently Lem was no Polish patriot and wanted to prevent that those letters became available to Polish scholarship. In Polish publication it was claimed and continues to be claimed, that I threatened to "publish" Lem's letters. But that was never the case. I wrote to him on October 4, 1995 expressly:

Since your letters for me are now only a reminder of things past, I am considering to donate our letter exchange and my business correspondence concerning your affairs, inasmuch as they are not needed for legal disputes or I have to keep them in accordance with Austrian legal requirements, to the Ossolineum library. As you are an author of Polish literature, that is the best repository for them. I might also entrust a literary historian with their scholarly interpretation. Of course, your literary rights in the contents of your letters will be fully protected, but I am the material owner of your letters and can therefore in my opinion dispose of them as I see fit.

I am convinced that Lem put his demand and then the litigation value so high because he thought:

- a) I would not be able to afford the costs of his lawsuit, and
- b) I would shit myself for fear of him and accede to his demands¹.

In this, however, he was mistaken, and apparently his understanding of human psychology left a lot to be desired.

¹ In original German: mir vor Schreck in die Hosen machen und gleich klein beigegeben würde (translator's note).

In private conversation, Lem never hid his dislike of and contempt for communism, but he avoided carefully any public criticism, declaring that he had no intention to become a martyr. On the other hand, he was not loath to accept support from the system, and in fact took it for granted. In the 1970's, Franciszek Szlachcic, the member of the Politburo of the Polish United Workers' Party (i.e. communist), deputy prime minister and minister of internal affairs (i.e. police) visited him to assure him of the support of the Polish government, including with the Nobel Prize Committee. But Szlachcic was ousted before he could keep any of his promises.

Lem had also a marked tendency to stress truisms such as that contracts would be kept by him; obligations that he then would break quickly. Such as the payment of commissions due from existing contracts. But soon he asked publishers to make all statements and payments only to him or concluded new contracts that had no other purpose than to avoid paying my commissions. Obviously, he counted that it would be very expensive (since all documents would have to be translated into Polish) and uncertain to enforce contractual provisions in Poland. And, in view of the poor sales of his Harcourt books and the accordingly minuscule commissions owing under the contracts with Harcourt, for instance, somewhat quixotic.

Long after the end of our professional relationship, he was profiting from my work without ever paying a cent, and his heirs continue to profit. Unfortunately, I lack the precise legal term for such a behaviour. So be it, but the commissions which he pocketed cannot have compensated the cost of his lost lawsuit which must have amounted to something more than \$ 25,000.