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The Cremator

It is quite well known that *The Cremator* (*Spalovač mrtvol*, 1968) is a work with an uneasy fate. Presently coming back to the cinemas digitally restored, the horror with elements of black comedy was banned at the dawn of the 1970s normalization period and was only publicly screened in its home country again after the fall of the Iron Curtain. Looking into the records of the Czechoslovak State Film, we will find out though that the forced withdrawal from distribution and the 1968 occupation of the Czechoslovak Socialist Republic were not the only difficulties accompanying the preparation and introduction of the film. The records rather call into question the „banned“ status of the film, with production complications related to copyrights coming to the fore – complications which one would rather expect in the film industry of market economy countries.

The Cremator on the market

In 1963, on the threshold of his forties, the National Gallery employee Ladislav Fuks finally manages to publish his psychological novel *Pan Theodor Mundstock* (Mr Theodor Mundstock).^[1] In the melting atmosphere of the 1960s, the work on the effects of fear on an introvert was a great success and Fuks became an established author. During 1965, he started working on a story called „The Cremator“ – a morbid name, as was typical of the author.

It was in relation to this story, which the writer intended to transform into a novel, that he was approached on 22 November 1965 by the Barrandov production team Šebor – Bor about a potential film adaptation.^[2] The team first ordered a synopsis from Fuks which must have increased their interest as they had the author write a film story and then a literary screenplay. The contracts on both these assignments contain an option clause on the purchase of copyright by the Barrandov Film Studio.

Barrandov production teams indeed had a contract template for such deals. These contracts were based on general provisions governing the relationships between the individual cultural organisations of the socialist state, mostly negotiated already at the beginning of the 1950s. The contracts were rather brief documents containing myriads of references to decade-and-a-half-old provisions. These paragraphs were hiding time limits both for the author (in regards to the submission of the screenplay) and for the film studio (in regards to the use of copyright options). This relatively trivial factor will later make Fuks's life rather difficult due to his impractical disposition. It will be his inexperience Fuks will be using in defence during the litigations, claiming he had had no experience with the film industry, he had never been informed about the full content of the contract and hadn't understood it.

Fuks spent the first months of 1967 working on drafts of the literary screenplay. He probably submitted the first draft at the end of January or at the beginning of February.^[3] According to the contract, the film studio had ten days to decide whether to use or not use the copyright option. The production team didn't use the option, leaving Fuks another few months to work on the literary screenplay. At the same time in autumn 1966, the writer submitted the manuscript of the novella, published at the beginning of the following year.^[4]

Complications occurred on 28 April 1967. Ladislav Fuks concluded an option contract on the copyrights to the novella *Spalovač mrtvol* with Phil Stein, the American owner of Phil Stein Enterprises, Inc.^[5] Travelling across Europe and buying lucrative stories, Stein used the option on 02 August buying all copyrights (to publishing, film adaptations, etc.). On 04 December, Fuks passed this contract to the DILIA agency supervising the copyrights in Czechoslovakia, which confirmed the legality of the purchase. All these actions were taken during Fuks's writing of the screenplay and without the Barrandov Film Studio knowing.

It is to be noted that all the contracts between Fuks and the Barrandov Film Studio indeed ended up in the possession of DILIA as well. However, it was the above mentioned agreement from 29 December 1966 that last contained the clause on the potential copyright assignment; after that, it was only contained in the final contract from 16 March 1968. This delay can explain the willingness of the agency to store contracts which were contradictory at a glance.

Two authors

While negotiating with Stein, Fuks was in his efforts to audio-visually transform *The Cremator* joined by a new colleague – the director Juraj Herz. The young filmmaker whose feature debut *Sign of the Cancer* (Znamení raka, 1966) had premièred the year before claimed to have chosen the story being written in the Šebor – Bor production team mainly because of its morbid name. After reading the novel manuscript he was disappointed as he thought it could never be made into a film.^[6] Nevertheless, he started working on the literary screenplay of the future film together with Fuks.

In November 1967, the contract terms were amended in a way that Herz would get half of the CSK 26,000 fee originally meant exclusively for Fuks. By this time, the screenplay had already been submitted with an added explication in which Herz and Fuks emphasized the horror potential of the story.

During November, a set of opinions was written on the final version in the ideological and artistic committee of the Šebor – Bor production team. The individual texts were authored by the writers Josef Škvorecký and Jiří Fried, director Vojtěch Jasný, film critic Gustav Francl and film theoretician Jiří Struska.^[7]

Struska's and Fried's comments from August and November are remarkable as they are the only ones containing more serious objections to *The Cremator*. Fried criticizes its pronounced literariness and focus on the word. He abandons his objections in a later opinion though. Struska appreciates its style precision but is afraid of emphasizing the horror aspects which could slip into parody in a Czech film.

„The horror of our lives is different after all than the artificial one of the Anglo-Saxons who must make it up to experience a pleasant tickle,“ he writes in an opinion on 22 November, putting more hope in the philosophical dimension of the film.

This concern of Struska's is interesting considering the fact that it was an „Anglo-Saxon“ who had bought the filming rights to the story which Fuks and Herz presented. The evening after this opinion had been written, the literary screenplay was approved by the committee. Struska had excused himself from attending it with regrets.^[8]

Genesis

On 17 January 1968, the Barrandov Film Studio found out about Fuks's contacts with the American producer. On that day, there was a meeting between Jiří Šebor, the Barrandov Film Studio legal officer Mr Nor, Filmexport representative Emil Sirotek and DILIA's officer Bedřich Jáhn. Jáhn informed the Czechoslovak State Film representatives on the contracts entrusted to the agency by Fuks and on Stein's rights to *The Cremator*.

There is no evidence that the Barrandov Film Studio confronted Fuks at this time. It can be assumed that Barrandov was confident about their rights to the story. As such, they only asked Jáhn to make Stein, who was in Prague at that time, aware that the rights to *The Cremator* are owned by Barrandov. Jáhn instead informed Fuks's lawyer Mr Svoboda and asked him to notify Stein (at least this is what Jáhn said to Šebor).

Subsequently, Svoboda informed Jáhn that Stein didn't intend to exercise his rights to *The Cremator* – first by telephone (on 03 March) and then in person (on the following day). As such, there was no written guarantee for Barrandov. It seems though that both Barrandov and Jáhn considered this information a sufficient guarantee for the production of Herz's film.

On 15 March, preparatory work started and on the next day, the final contract was drafted on the purchase of copyright from Fuks for CSK 30,000. In May, Herz together with the cinematographer Stanislav Milota finished their work on the technical screenplay. The Barrandov Film Studio director Vlastimil Harnach approved a budget of CSK 3,201,000 and on 27 June the filming started.

Before that, the last drama of the preparatory phase occurred though. Fuks refused to sign the contract sent to him by Barrandov in March without consulting it with Phil Stein. In a letter from 17 May, he informed the producer Šebor on the reasons why he hadn't delivered the signed contract yet. In the letter, Fuks commits to signing the contract, claiming to fully respect the rights of Barrandov. However, he also writes: „...but I also don't intend to and cannot harm the rights of Mr Stein. And even if I don't harm his rights by signing the contract with the studio, I will wait for his arrival... I am not a copyright expert, that's what I have Mr Stein for...”^[9]

This implies that Fuks saw the American rather as his agent for matters related to *The Cremator*. The writer exchanged letters with Stein and on 28 May, he sent the signed contract to the Barrandov Film Studio. At the end of June, he was given the role of a collaborating artist. This in fact recognized the symbiosis between the authors Fuks and Herz. In this way, Fuks could still participate in the filmmaking even after completing the work on the screenplay.

Dispute

The Cremator was filmed in summer and autumn 1968 and its production was interrupted by the August invasion of the Warsaw Pact troops. The cinematographer Milota took to the streets filming the invaders on the material meant for Herz's film. On 08 October, during the ambiguous period between the invasion and the beginning of „consolidation“ changes in all Czechoslovak Socialist Republic institutions including the Barrandov Film Studio, the filming ended. On 28 December (less than a month after the deadline), the first copy was finished.

Herz often mentioned in his later interviews that he had also made a final scene where Kopfrkingl was watching the Soviet tanks smiling, but he had been banned to add the sequence to the film. However, this information is only based on the director's story.

Only after completing the film product and during the screening preparations did the copyright dispute erupt that Fuks had initiated two years earlier by the double sale of rights. On 27 January, there was a meeting between Fuks's lawyer Svoboda, Phil Stein and the representatives of Filmexport and the Barrandov Film Studio, during which the American claimed the rights to the just finished film for foreign production.

Even though the Czechoslovak State Film representatives questioned Stein's claims, they didn't rule out a possible agreement. However, in the following month the negotiations took a more aggressive tone again.^[10] Stein informed Filmexport that he didn't intend to make any compromises or concessions on his rights. By concessions he meant the limitation of distribution rights to the USA, Canada, Japan and the Philippines. Filmexport then drafted a contract containing these terms while refusing to acknowledge Stein's actual entitlement to the copyrights.

On 13 March, the Barrandov Film Studio brought an action; however, not against the American producer, but against Fuks. Through the action Barrandov wanted to make clear their full and global rights to the produced film, without giving up on negotiations with Stein who offered the most favourable conditions out of the possible distributors. In this rather absurd twist of negotiating positions, one claimant of rights had to bring an action against their original holder to be able to trade with the other claimant. Through Fuks, Barrandov wanted to annul Stein's rights. The writer's lawyer Svoboda contested this step vigorously on 02 April on a Czechoslovak Film and Television Union meeting which was supposed to settle the dispute before the court hearing.

However, these efforts failed and on 06 July, the Prague 6 District Court held that the exclusive rights to *The Cremator* belonged to the Barrandov Film Studio, ordering Fuks to bear the costs of the legal proceedings (almost CSK 15,000). He was released from this obligation upon appeals.^[11]

An adventure in the New World

The dispute between Barrandov and Stein was settled as well in the end, in this case out of court. Even though the selling of the American rights to Stein had been Filmexport's only hope for the satisfaction of their claims since January 1969, they nevertheless negotiated with other buyers during the time when they didn't hear from Stein or weren't on good terms with him.

One of those was the representative of the Quebec based Eurofilm Marie Desmarais. She didn't express any particular interest in the film in February 1969 though, and the film was not included in the package of films to be sold to Eurofilm. However, at the end of June, Desmarais started to demand from Filmexport that *The Cremator* be included in the package after all. Filmexport informed Desmarais that they had sold the North American (including French-Canadian) rights to Grove Press in the meantime. Subsequently, the Filmexport director Stanislav Kvasnička contacted Grove Press to buy the rights back.

The transactions occurring during the rest of the year weren't documented; these actions would certainly deserve some research in the archives of Eurofilm, Stein and the Czechoslovak State Film representative in the USA J. Rappoport as well (if there

are any such archives). It can be assumed based on later documents though that Filmexport bought the rights back from Grove Press but Desmarais probably cut off contact, and the trade with Stein could finally be made. However, Stein failed to pay the promised amount – in summer 1974, he relinquished part of the rights (for Canada and Japan), asking the Czechoslovak party to erase part of the debt. At the same time, he claimed he hadn't managed to sell the rights in America yet.

Anyway, these steps opened up the space for Desmarais. She started claiming *The Cremator* already in 1970. She claimed it was supposed to be included in the purchased package and that she had already paid for it. This claim petered out and Filmexport referred her to Stein who she probably didn't approach though. However, in summer 1974, the representatives of the Czechoslovak State Film could offer television rights for the French speaking Canada to Eurofilm themselves. They did so; however, the parties didn't agree on the price.

The entire story with Desmarais could have ended at this point. However, in August the Canadian entrepreneur started demanding to be sent the film copy. In the first letters, she argued that the trade had been made and she had already sent the proposed amount (this might have been true; Filmexport hadn't approved this amount though). She then started claiming to have rights to *The Cremator* since 1969.

Filmexport stopped responding to Desmarais and offered the film directly to the Canadian television. However, a parallel offer was made by Eurofilm. The representatives of the Czechoslovak film industry thus referred the matter to the Czechoslovak court to prove their possession of the rights. The court clearly confirmed their possession a year later and Desmarais was ordered to cover the costs and pay damages. After that, *The Cremator* was finally sold to the Quebec TV Radio Canada.^[12] At the time it was a long time since it had been withdrawn from Czechoslovak distribution.

Still/back in the cinemas

In contrast to other banned films, *The Cremator* was lucky to have been made and introduced before the beginning of the normalization period. Films made about a year later, such as *The Ear* (Ucho, 1970), were not introduced and other problematic films, such as *The Borstal* (Pasťák, 1968), were not even finished. Herz's film was approved

for distribution on 06 January 1969 by the director of the Czechoslovak State Film Alois Poledňák.^[13]

It was first screened on 14 March in Prague, and the gala première was held on 11 April at the Finále Plzeň festival. With more than half a million viewers in 1969, *The Cremator* became the fifth most successful film in the Czechoslovak Socialist Republic.^[14] During the subsequent two years, Filmexport sold it to France, Britain, the Federal Republic of Germany and Belgium.^[15] And at least in art-house cinemas, it was screened in Yugoslavia, Hungary, Poland, Bulgaria and Romania.^[16]

In September 1969, *The Cremator* won the Silver Siren Award at a festival in Sorrento. In the subsequent year, it was screened at the festivals in Melbourne, Sydney and Islamabad, and selected as the Czechoslovak nominee for the Academy Award for Best International Feature Film (it wasn't shortlisted though).^[17] In 1972, it won an award in Sitges, Catalonia.

The international reviews of *The Cremator* were only positive.^[18] However, in April 1972, the vice-president of the Association of Czechoslovak Dramatic Artists Zdeněk Mika criticized the film and the alleged morbidity of Juraj Herz's entire work, claiming the film was „disgusting“.^[19] The same month, the film was screened during a cultural event at the embassy in Moscow, for which the responsible persons were criticized at the Ministry of Foreign Affairs.

On 06 April 1973, *The Cremator* was withdrawn from distribution both in Czechoslovakia and the socialist block. This day marks its placing in the imaginary vault. However, this hiding of the film was by no means complete.

For instance in contrast to *The Ear*, the existence of *The Cremator* was no secret (it is e.g. contained in the list of Herz's films from 1978). The film was still broadcast on West German TV. There was no official introduction in the USA; however in December 1979, it was screened at a private event in Malibu with Filmexport knowing.

During the normalization period, the Czechoslovak State Film representatives probably counted on the future reintroduction of *The Cremator* into distribution.^[20] During the 1980s, they included it in a list of films they had business plans for in the future. Since 1988, they were negotiating its sale to the USA where it was exported in 1990.

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However, the film only premièred anew in Czechoslovakia after the Velvet Revolution on 01 August 1990. The above mentioned information significantly questions the universally established status of *The Cremator* as one of the banned films. The film was indeed problematic both due to its metaphorical meaning and the involvement of unwanted artists (Chramostová, Milota); however, its handicaps weren't so serious, as it remained in distribution until 1973 and remained part of Filmexport's future plans.

As such, it is rather paradoxical that in the times of the nationalized and state controlled film industry, the greatest difficulty related to *The Cremator* was the seemingly trivial copyright dispute.

Notes:

[1] POLÁČEK, Jan. *Příběh spalovače mrtvol: dvojportrét Ladislava Fukse*. Praha: Plus, 2013. Objevené portréty. ISBN 978-80-259-0221-9 (page 133).

[2] BARRANDOV STUDIO ARCHIV: SBÍRKA SCÉNÁŘŮ: FSB_SCE_Korespondence I-III. soudní spory

[3] BARRANDOV STUDIO ARCHIV: SBÍRKA SCÉNÁŘŮ: FSB_SCE_Smlouvy

[4] Poláček, page 162

[5] BARRANDOV STUDIO ARCHIV: SBÍRKA SCÉNÁŘŮ: FSB_SCE_Korespondence I-III. soudní spory

[6] Poláček, page 160

[7] BARRANDOV STUDIO ARCHIV: SBIRKA SCÉNÁŘŮ: FSB_SCE_Posudky

[8] BARRANDOV STUDIO ARCHIV: SBIRKA SCÉNÁŘŮ: FSB_SCE_Posudky

[9] BARRANDOV STUDIO ARCHIV: SBÍRKA SCÉNÁŘŮ: FSB_SCE_Smlouvy

[10] Half a year later, Stein told the Filmexport representative Dagmar Pokorná in New York that he had been verbally attacked by one of the Czechoslovak State Film employees and that he would demand an apology even through the courts if necessary. – NFA: FONDY INSTITUCÍ: R8_AII_2P_6K_1969_Cesta do USA

[11] BARRANDOV STUDIO ARCHIV: SBÍRKA SCÉNÁŘŮ: FSB_SCE_Korespondence I-III. soudní spory

[12] NFA: R7_BII_1P_6K_FEX: FEX x Desmarais

NFA: R7_BII_1P_6K_FEX: 1968 – 1975 Spor

[13] Nine months later, Poledňák was removed from the office and imprisoned for almost two years for anti-state activities.

[14] NFA: FONDY INSTITUCÍ: R12_BII_3P_4K_1969_10 filmů s největší návštěvností ČSSSR

[15] NFA: FONDY INSTITUCÍ: R12_AII_29_7K_1972_Seznam celovečerních filmů prodaných 1970

NFA: FONDY INSTITUCÍ: R12_AII_29_7K_1972_Seznam celovečerních filmů prodaných 1971

[16] ÚŘ ČSF: Plán pobytu Stanislava Zvoníčka v BLR od 29. 1. – 2. 2. 1973

[17] NFA: FONDY INSTITUCÍ: R12_BII_3P_4K_1969_10 filmů s největší návštěvností ČSSSR

NFA: FONDY INSTITUCÍ: R2_BII_3P_8K_Film na MFF Melbourne 1970

[18] NFA: FONDY INSTITUCÍ: R12_BII_3P_4K_1969_10 filmů s největší návštěvností ČSSSR

[19] NFA: FONDY INSTITUCÍ: 1972 Zpráva místopředsedy Svazu českých dramatických umělců v Plzni 12. 4.

[20] NFA: R7_BII_5P_2K_FEX: „Zlatý poklad čs. celovečerních filmů“ 1985–89

[21] NFA: R7_AI_6P_7K_FEX: Korespondence+seznam