

Aleksander Bjelčević  
University of Ljubljana  
Aleksander.Bjelcevic@ff.uni-lj.si

## Truth and lie in literature: Slovene writers sued for slander<sup>1</sup>

### Introduction

In 1999 two writers Matjaž Pikalo and Breda Smolnikar were accused of lying and slandering real persons in their two novels *Blue-e* and *When the Birches Up There Are Greening*. Pikalo in *Blue-e* was supposedly lying about and offending a certain policeman from his home willage and Breda Smolnikar was accused of *lying* about and *offending* and *publicly exposing* things from private life of certain family Nakrst from her home willage by portraying their mother Frančiška (in the novel called *Rozina*) as a cunning shopkeeper and a woman with huge sexual appetite, involved in illegal production of liquer, and cooperating with the Nazis. Both were sued in court for defamation and sentenced to huge financial penalties (thousands of euros) and Smolnikar was prohibited from selling that novel. Smolnikar went to three courts and after eight years she was acquitted in 2007 by the Constitutional court<sup>2</sup>. Then the Nakrst family appealed to the European court of human rights and in 2014 Smolnikar was acquitted by this court as well.

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<sup>1</sup> The author acknowledges the financial support from the Slovenian Research Agency (research core funding No. P6-0239).

<sup>2</sup> With explanation that the novel is not a chronicle of the family Nakrst, because incriminated descriptions are not offensive and because Smolnikar did not intend to insult the family.

In this paper I will be dealing mainly with the Smolnikar case because it had the widest public response. In the period between 1999 and 2007 many journalists, writers, Slovene PEN club<sup>3</sup> and Slovene Writers Association and one or two literary scholars were publicly supporting Smolnikar in newspapers, interviews, on TV, on Slovenian book fairs and on the Internet discussion forum *Slovene-literature (SlovLit)*. They offered several arguments which were mostly based on stereotypes about literature (literature is just a fiction, a possible world, an allegory). I will examine the validity of their most common arguments. Because there were too many newspapers' articles I will not refer to them (Smolnikar collected some of them in the second and the third edition of her novel, 1999, 2004). Instead I will pay special attention to scholarly paper by Juvan (*Fikcija in zakoni: komentarji k primeru Pikalo*)<sup>4</sup> which deals with Pikalo case, and Juvan (*Zadevi Smolnikar ob rob*)<sup>5</sup> which is an application of his 2003 paper on Smolnikar case. While I agree that the financial penalties were absurdly high and the prohibition of selling her novel is a violation of free speech, I think that writers cannot be defended with the type of arguments which I am intending to present and critically evaluate.

Those who were publicly supporting Smolnikar (journalists, Slovene PEN, some scholars) claimed that her novel does not speak about the family Nakrst because literature never speaks about actual people. They based their arguments on the following fallacious *universal* statements about literature: (1) *all* literature (*every* work of literature), at least every novel, is *fiction* (characters and events are either fictional or major transformations of real persons into fictional ones); (2) *all* literature is *just* a possible world (characters that resemble real persons are not these persons, they are their counterparts<sup>6</sup>), (3) *all* literature is (*just*) an allegory of universal human situations which means that *purpose* of literature is *never* to speak about real people and events or to give true information about them. And even when novels do refer to real people it would be wrong to inquire what is true about them because of the "fictional contract" between authors and readers. So literature never lies (= writers never lie) and insulting someone is never its aim. Therefore no writer should ever be accused of lying and insulting/offending real people. Assuming the validity of these universal

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<sup>3</sup> A member of *PEN International*.

<sup>4</sup> M. Juvan, *Fikcija in zakoni: komentarji k primeru Pikalo* [Fiction and laws: commentaries on the Pikalo case.], "Primerjalna književnost" 2003, no. 26/1.

<sup>5</sup> M. Juvan, *Zadevi Smolnikar ob rob*, [in] Breda Smolnikar, *Najbolj zlata dépuška pripovedka o ihanski ruralki, Depala vas*: self publishing, 2004.

<sup>6</sup> M. Juvan, *Fikcija in zakoni*, p. 374–375.

statements the public defenders of Smolnikar claimed that her novel is not about family Nakrst: if all literature is just a fiction then her novel is a fiction by definition (*apriori*) and so one can support or defend Smolnikar without reading her novel.

In my opinion all of these universal statements (with quantifiers *all, every, just, never*) are false generalisations<sup>7</sup>, because none of these characteristics (fictionality, being a possible world, being allegory) are shared by *all* works of literature, none of them is a necessary condition for literature (for example some texts are considered literature solely because of their »special« use of language and poetic forms). Generalisations are false because literature and novels are open sets<sup>8</sup> and change constantly and there are no characteristics and functions that all of the works have in common. Those arguments would be valid if *our definition* of literature would include only fictional and allegorical texts, but it does not.

All these universal statements are *empirical claims about empirical facts* and should be examined in each particular case, for each particular novel (as correctly stated in *Stališče Slovenskega društva za primerjalno književnost do obsodbe pisateljice Brede Smolnikar*<sup>9</sup>). To me it seems obvious that although the reader normally assumes that a certain novel is a fiction, he will (intuitively) decide whether to accept the “fictional contract” or not only after reading a large portion of that novel. Of course in the majority of novels the scope of their fictionality is undecidable and we accept the fictional contract without hesitation. But in some cases, for example autobiographical novels (such as the well-known Slovene 20<sup>th</sup> century novel *Kristalni čas* (1990) by Lojze Kovačič, or recently published Generationsroman *Vrata nepovrata* (2014) by Boris A. Novak), it would be even wrong to treat them as total fictions because they clearly refer to actual personal and historical events. In the Smolnikar case the question whether her characters are total fictions (as public defenders claimed) can easily be resolved. Namely in the later editions of her novel she published judicial documentation in which the plaintiffs describe their family life in detail (in order to prove that Smolnikar was truly writing about their family, which Smolnikar knew quite well) so the interested reader (i. e. defenders, judges) has (exceptional) opportunity to compare the novel and the life of family Nakrst – which no one did (except in seminar papers): claims that novel is a fiction were made *apriori*.

<sup>7</sup> A general statement is true only when its negation is false, so the statement “every novel is fiction would be true if no novel is non-fiction”.

<sup>8</sup> M. Weitz, *Vloga teorije v estetiki*. “Analiza, časopis za kritično misel” 1999.

<sup>9</sup> <http://sdpk.zrc-sazu.si/smolnikar.htm> [accessed: December 2017].

In the following sections I will examine some of these universal statements.

1. **“Every novel is a fiction, all novelistic characters are fictional beings.”** This was the most common defense.<sup>10</sup> But not *every* novel is a fictional text and not *all* literary characters are fictional beings (F-beings). Discussing fiction we must be aware of a distinction between fictional texts (literary fiction, jokes etc.) and fictional beings, i. e. between a *description* of a F-being (for example in a novel) and F-being itself. A pure F-being is a non-existent being that makes its first appearance in a work of fiction. Fictional text is a text (a) which contains descriptions of F-beings and events and (b) which is *intended* by the author<sup>11</sup> to be a fictional text and c) authors usually reveal that intent by using certain signals to suggest that we are reading fiction. Author’s intention is crucial, for example American Indian myths are not fictions because although these mythical beings do not exist, the myths are not told as fictional stories; myths are not fictions, they are false stories.

But fictional texts and above all literary texts can include real people as well, they sometimes *refer to real people* by either taking them as models or even referring to them directly by personal names and/or descriptions (Napoleon in *War and Peace*) and so literary texts can also speak about real persons and events<sup>12</sup>. Descriptions in (literary) fictional text refer both to fictional and to real beings, they are poly-referential.

There is a sharp ontological distinction between the existence of fictional and real beings: fictional beings exist only in texts, there is no grey zone between fictional and real beings. On the other hand the distinction (demarcation line) between a *description* of a fictional and description of a real being is not sharp – it is a matter of degree, because there are at least two kinds of fictional beings: beings that are completely author’s invention; and beings built on real models with some fictive properties and engaged in fictive actions (i.e. descriptions of real persons can be fictionalized). Between description of real person and description of fictional being there is a wide range of possibilities. This is important for solving the question: “Is the author referring to real person?”, “How much does the author want his characters to resemble real persons and does he want some of his readers to recognize them?” These are the key questions in Smolnikar case.

<sup>10</sup> M. Juvan, *Fikcija in zakoni*, M. Juvan, *Zadevi Smolnikar ob rob.*

<sup>11</sup> This is fiction in the narrow sense. Fiction in broader sense, which is not our concern, includes all kinds of untrue statements and texts (mistakes, lies, myths, historical reconstructions).

<sup>12</sup> And probably there are literary texts and even novels that contain no fictional beings at all: some autobiographies (*Kristalni čas* Lojze Kovačič, *Vrata nepovrata* by Boris A. Novak), some testimonial narratives etc.

**1.1 “Any resemblance is a coincidence.”** is a derivative of the above argument (1), this was the answer of some supporters to this key questions: for example Slovene writers association (in a letter to the Ministry of Justice, published in Smolnikar 1999) claimed that any resemblance to actual persons is purely coincidental; and Juvan<sup>13</sup> claimed that readers make a serious mistake if they identify characters as real people because it is wrong even to pose a question “Is the character in this novel a real/actual person?”.

This statement is false because coincidence is not a question of principle, it is an empirical question of author’s intentions: the *author* and not the reader decides whether a certain literary character is a fictional being or an actual, real person.<sup>14</sup> (The question of ontology of literary characters is not to be confused with readers’ willingness to accept a “fictional contract”.) Coincidence occurs only when a certain character resembles a real person although the author was not intentionally describing any real person.<sup>15</sup> The only mistake that readers can make is wrong identification: if they treat a fictional being as a real person and vice versa, treat a real person as fictional one<sup>16</sup> they make a mistake. Readers are mistaken when they misinterpret the author’s intentions<sup>17</sup>. In a lawsuits against writers it is crucial to try to identify the *author’s intentions* (i. e. making the best possible hypothesis about his intentions) because what counts in court is whether a defendant deliberately caused a harm.

**2.2. Concerning this key question Juvan<sup>18</sup>** and many others claimed that she did not. I think she did: she knew some members of Nakrst family, she heard the story of this family, she was also visiting one of the family members inquiring about their life in the USA (for the purpose of unpublished essay about Slovenian emigration). The whole novel *When the Birches Up There Are Greening* is about one family who emigrated to the USA at the beginning of 20<sup>th</sup> century and returned to Slovenia just before WW II. In later editions of her novel (1999, 2004) Smolnikar published the judicial documentation from the trial where the Nakrst described their family history, so that readers can compare both

<sup>13</sup> M. Juvan, *Zadevi Smolnikar ob rob.*

<sup>14</sup> J. Searle, *Logični status fikcijskega diskurza*, [in] *Sodobna literarna teorija*, Ljubljana, 1995, p. 144.

<sup>15</sup> S. Kripke, *Imenovanje in nujnost*, Ljubljana, 2000, p.117.

<sup>16</sup> What literary devices will author us for signalling his intentions and whether he succeeds in signalling doesn't change the fact that he is referring to real person.

<sup>17</sup> By intentions I mean the author's conscious and intentional decision to take a real person as his model. The question how the readers know and should they inquire about the author's intentions is not the topic of this paper.

<sup>18</sup> M. Juvan, *Zadevi Smolnikar ob rob.*

stories: stories match in so many events and personal characteristics and personal names and their family name (for example in the novel they are called Brinovec and Brinovec is their real econym) that it is evident that she used them as models. Of course the *Birches* have all the characteristics of a novel (fictive dialogs, characters' inner thoughts, imagined private events) but the characters are not substantially changed and so the locals recognised them immediately (that was one of the motives for the lawsuit); besides Smolnikar was known for writing novels in the manner of local chronicles as she herself says in an interview in 2016 that she uses the stories that people tell.

So she did use them as models and she knew that some locals will recognize Nakrst. The only remained question is did she have any bad intentions or is she describing them with sympathy: this is both narratological and judicial question, a crucial question which was rarely put (it was mentioned by Juvan<sup>19</sup>).

2. **“Just a possible world”** (PW). The most ambitious defense of Smolnikar and Pikalo was elaborated by Juvan<sup>20</sup> who was relying on contemporary “potmodern theory” of possible worlds (Ruth Ronen, Marie-Laure Ryan): literary fiction “parasites on real world”, it builds its own fictional world on the background of real world and sometimes even refers to actual people as in Pikalo’s and Smolnikar’s case. Nevertheless all works of fiction are just possible worlds and literary characters are just possible beings which for Juvan means that they are not people from our world; literary characters are just “counterparts” of real people. And therefore the world of the Smolnikar’s novel is not the world of family Nakrst.

This is a misconception of possible worlds: Juvan’s elaboration of fiction and possible worlds is not clear but it seems that in his view possible worlds have the same characteristics as fiction, which is quite the opposite to philosophers’ conception of possible worlds. I see three mistakes here. (1) He treats three different sets of things (works of literature, works of fiction and possible worlds) as one set, particularly he treats fiction as possible world (as a subset of possible worlds). (2) Then he makes a reverse operation and treats possible worlds as some sort of fiction, a subset of fiction. (3) The third mistake is a consequence of the second: he says that although personal names used in the novel refer to the family Nakrst, the novel’s characters are not identical to Nakrst because characters are

<sup>19</sup> M. Juvan, M. Kravos, B. Smolnikar, *Primer Brede Smolnikar*, Televizija Slovenija, 2007.

<sup>20</sup> M. Juvan, *Fikcija in zakoni* and M. Juvan, *Zadevi Smolnikar ob rob*.

just their counterparts and counterparts are connected to real Nakrst only by transworld identity. Here Juvan confuses two opposite theories about the nature of possible beings, a counterpart theory and a transworld identity theory (for example Plantinga<sup>21</sup>). Let us take a closer look at these misconceptions.

### 2.1 “Literature is fiction and fiction is just a possible world”.

Assuming that literature is fiction he goes on saying that “fiction is *extended* possible world [...] fictional worlds are sets of non-actualized possible states”<sup>22</sup>, in short, literature = fiction = possible world; and because family from the novel is just a possible family, they are not the Nakrst family. But this equation is wrong, these three sets are not equal nor do they intersect, but most important is that fictional worlds are probably not a subset of possible worlds.

What is a possible world? It is a possible state (or history) of the world, possible state of affairs, the way things in our world could be<sup>23</sup>. These are typical examples: today I had bread and marmalade for breakfast, but it is possible that I would have eggs – having eggs for breakfast is a possible world; another example is a possible world in which Hitler did not become a German chancellor in 1933; a third example of a possible world is that I might have been 2 cm taller. Possible world is a simple, intuitive, every day concept and not a philosophical concept (although it is a philosophical problem). According to Kripke possible world is just another way of saying “it is possible that x” or “possibly x”<sup>24</sup>: when I say it is possible that Hitler didn’t become a chancellor I imagine a possible Germany without Hitler’s presidency. The important thing about possible worlds is that they are possible states of *our real world* and not some “distant planet” and “never-never land”<sup>25</sup>.

But why using a possible worlds theory at all? Some philosophers, sometimes called possibilists (see entry *Fiction* in SEP), try to explain the nature of F-beings as possible beings, “possible beings” is their answer to the question “what kind of beings are F-beings?” Since F-beings lack existence in our actual world, they may exist in some possible world: Werther and Lotte anAlbert, characters in Goethe’s novel, did not exist, but it is possible

<sup>21</sup> A. Plantinga, *The Nature of Necessity*, Oxford 1982.

<sup>22</sup> M. Juvan, *Fikcija in zakoni*, p. 10–11.

<sup>23</sup> S. Kripke, *Naming and Necessity*, p. 15; A. Plantinga, *The Nature of Necessity*, p. 44; D. Lewis, *On the Plurality of Worlds*, Oxford 1986, p. 2.

<sup>24</sup> S. Kripke, *Imenovanje in nujnost*, p. 17–19, S. Kripke, *Naming and Necessity*, p. 15–17.

<sup>25</sup> S. Kripke, *Naming and Necessity*, p. 15, 17.

that they could have existed, they are possible beings and Goethe's novel is a possible world. But other philosophers and literary theorists<sup>26</sup> do not accept this theory because (a) fictional beings are incomplete<sup>27</sup> and so they are not possible in the same sense as real beings are possible; (b) some fictional beings/literary characters are im-possible beings (for example a man who is older than his biological parents in a short story *Kaj nikoli ni bilo* by a Slovene writer Josip Jurčič, which is basically a concept of travelling in time). Possibilism is only one of several conceptions of fiction.

If we use the concept of possible worlds correctly in the above sense (possible beings are possible states of real people) then one thing about literature and possible worlds is true: literary worlds really are possible worlds – but only when they refer to real people, which is just the opposite from Juvan's conception. If we say that the world of Smolnikar's novel is a possible world – then this is the possible world of real Nakrst family because those events that happened in the novel could have happened to the family Nakrst. An example of such possibility is the main character's name Rozina. In reality the Nakrst children were called Rozine (raisens) because their mother Frančiška was selling raisens: in the novel these names are changed and Rozina is their mother's name. But it is quite possible that Frančiška would be called Rozina and one of the possible worlds where she is called Rozina is Smolnikar's novel. And also all the incriminated events (selling alcohol during prohibition) could have happened, they are possible.

2.2 Juvan's idea of possible worlds is different: according to him possible worlds are something like fiction. After assuming that fiction

<sup>26</sup> S. Kripke, *Imenovanje in nujnost*, Ljubljana 2000, p. 117 rejects possibilism and so does Ronen: »It seems counterintuitive to treat fictional worlds as non-actualized states of the world or as possible situations that did not take place. [...] fictional worlds are not non-actual in the same sense that possible worlds are.« (R Ronen, Are fictional worlds possible? In: *Fiction Updated...*, 1997, p. 24 ff.) »Although initially attractive, the idea that fictional objects are possible objects should not be accepted blindly.« (SEP, entry *Possible objects*.)

<sup>27</sup> According to some philosophers F-beings are not complete beings and therefore they are not possible beings (Plantinga, *The Nature of Necessity*, p. 44; entry Fiction in SEP). Take Werther for example: incompleteness rises from the fact that we don't know who were his schoolmates, did he like mountaineering, who was his first love etc., Goethe didn't tell. We can imagine different possibilities for each of these questions: it is possible that he liked mountaineering and is possible that he did not, that his first love was Helga or Elizabeth etc. Each of these possibilities is a different Werther and so there are many Werthers: but which of them is the Goethe's Werther (S. Kripke, *Imenovanje in nujnost*, p. 36)? Since there is no way to decide which one (Plantinga, *The Nature of Necessity*, p. 153–154) the correct answer could be »none«: therefore fictional persons/beings are not possible persons because incomplete person is not a person at all. (The answer »surely one of them, we just don't know which one« seems to me a wrong answer: it is not that we don't know, it is that even Goethe couldn't imagine his Werther in all of details that constitute a human being with all his personal history.)



is identical with possible worlds he makes a reverse operation: possible worlds are a subsets of fiction. Idea that “fiction is extended possible world” and that literary characters who have the same names and the same characteristics as real persons “are ontologically no different from pure fictional characters”<sup>28</sup> imply that he treats possible worlds like before mentioned distant planets and never-never land (Kripke). But this is just the opposite to philosophers’ conception of possible worlds: even if we accept the idea that fiction is a subset of possible worlds, the reverse is not true: possible worlds are not a subset of fiction, possible states of real beings are not like F-beings (London from Holmes’ novels and Napoleon from *War and peace* »are not fictional entities«<sup>29</sup>). When real beings and places appear in works of literature they are real; when Nakrst appear in Smolnikar novel they are real Nakrst.

### 2.3 “Novel’s characters are just counterparts of real people”.

Juvan<sup>30</sup> says that although the names in the Pikalo’s and Smolnikar’s novel refer to real people, they are not them, they are *just their counterparts, just their version (the doubles)*<sup>31</sup>, connected to real people *only by transworld identity*; and these counterparts are ontologically no different from purely fictional beings; the relation between the characters and the actual family is a relation of *transworld identity*; and therefore the characters are not the Nakrst family. But the theory about transworld identity (TWIT) and the counterpart theory (CT) are two *opposite* theories about the ontology of possible beings: TWIT says that the *same* being “exists in *more than one* possible world (with actual world treated as one of the possible worlds)”<sup>32</sup>; while the CT says that the *same* being exists in *one* world only. So it’s a mistake to claim that literary characters are counterparts of Nakrst and at the same time transworldly identical to Nakrst; it is either one or another. And none of these two theories, if I understand them correctly, supports the idea that novels do not speak about real people.

Let us illustrate both theories with this example: I, Aleksander (A), have three children (A<sub>3</sub>) but I wanted to have four (A<sub>4</sub>). Is A<sub>4</sub> the *same* person as A<sub>3</sub>, are we identical? According to counterpart theory no: the *same* person exists in *one* possible world only (different possible worlds’ are spatio-temporally separated) but it has *counterparts* in other possible

<sup>28</sup> M. Juvan, *Fikcija in zakoni*, p. 11.

<sup>29</sup> Entry *Fiction* in SEP.

<sup>30</sup> M. Juvan, *Fikcija in zakoni*, p. 374–375, M. Juvan, *Zadevi Smolnikar ob rob.*

<sup>31</sup> S. Kripke, *Naming and Necessity*, p. 18 ironically calls this doubles a »phantom counterparts«.

<sup>32</sup> Entry *Transworld identity* in SEP.

worlds. Why are we not identical<sup>33</sup>? Although both Aleksanders share the same *essential* properties<sup>34</sup> we still *differ* in one non-essential property (having different number of children): being identical means to have *all* properties in common. So  $A_3$  and  $A_4$  are counterparts,  $A_3$  is living in a world with three children and  $A_4$  in a world with four children. But an important issue is that  $A_4$  is *essentially* me, Aleksander Bjelčević. The TWI theory says the opposite: the *same* person can exist in *more than one* world, i.e. in an actual, real world and in many (countless) possible worlds: which means that  $A_3$  is the *same* person as  $A_4$ , we are identical: when I think of me having four children, this is *my* possibility<sup>35</sup>, this is me.

So if the characters and Nakrst are counterparts then they are not transworldly identical and vice versa: if they are transworldly identical, they are not counterparts. Juvan should pick one of these theories and not both. But do any of these theories support the idea that Smolnikar's characters can not be the Nakrst family? According to TWIT the characters from the novel could be *identical* to the Nakrst family, they could be *the same* family (under condition that names and descriptions are definite enough to pick up exactly that family), because the *same* Nakrst family can exist in many possible worlds and the world of the novel is one of them. According to CT they are not identical, because two things are never identical (for example me today is not identical to me yesterday), but they share same *essential* properties, they are *essentially* the Nakrst family; they are the *real* family although not the *actual* family (because possible states are non-actualized states of real persons).

When we turn away from philosophical theories to intuition, it tells us the same: when I imagine myself as having four children – am I thinking of myself? Yes. When student Adam says “Why didn't I start studying for this exam three days earlier!” he is also thinking of himself. Why? Because not all of my properties are *essential* to me and not all of Adam's properties are essential to him, so it is natural to suppose that persons in these possible worlds are us. It is useful to compare fictional statements about real beings with lies and mistakes. These too are grounded on the supposition that the person we lie about or are mistaken about is real person; mistakes

<sup>33</sup> The problem of identity of material beings is a very difficult one, says Kripke: »the problems of giving such criteria of identity are very difficult [...] Mathematics is the only case I really know of where they are given [...] I don't know of such conditions for identity of material objects over time, or for people. Everyone knows what a problem this is.« (S. Kripke, *Naming and Necessity*, p. 42–43; S. Kripke, *Imenovanje in nujnost*, p. 36–37.)

<sup>34</sup> Counterparts “do not have *all* of their properties essentially» (SEP, entry *David Lewis*), where essential property is such property that “every one of that object's counterparts in other possible worlds [has] that property» (SEP, entry *Lewis's metaphysics*).

<sup>35</sup> J. Nolt, *Logics*, Wadsworth 1996, p. 313.

and lies are possible worlds. In order to understand a mistake, we must suppose that it is about the person in question: *sine qua non* of a mistake “Mickiewicz was born in 1797” is that it claims something falsely about Adam Mickiewicz and not about some other person. – Philosophical theories address subtle problems of identity, essence, accident, necessity, possibility which only philosophers understand. In discussing literature we must take into account those commonsense theories of fiction which majority of readers, professional and non-professional, accept, a theory like Markiewicz’s *Fikcija w dziele literackim*.

**3. “Literature never lies”.** Pikalo’s and Smolnikar’s novels were charged of lying. The purpose of introducing the possible worlds theory was to give a philosophical justification for an intuitive assumption that Smolnikar did not lie about the family<sup>36,37</sup> But if novels are possible worlds this also includes mistakes and lies: lies are possible worlds as well, when I lie that Andrzej has stolen my pencil I imagine a possible world with real Andrzej in it. If the Smolnikar’s novel is a possible world then among the things said about the family some are true (Smolnikar was well informed about the family), some are fictions, and some of them *could* also be lies.

“Do novels lie?” is not a theoretical question, it is an empirical question. An author can write about at least three types of non-actual or counter-factual states of affairs: (a) he tells a fictional story or (b) he makes a mistake about actual persons and events<sup>38</sup> or (c) he can also tell a lie - if he wants to<sup>39</sup>: if an author decided to tell a lie, then he is lying. The question “How do readers know what is a fiction and what is a lie?” does not eliminate the possibility of lying, it does not turn a lie to a fiction: because it is the author, not the reader, who decides what is a lie and what is a fiction. Of course we normally do not think that literature lies and in cases of vagueness we usually apply the so called *principle of charity* which says that one should treat the utterer’s (= writer’s) statements as rational and

<sup>36</sup> M. Juvan, *Fikcija in zakoni*, p. 13; M. Juvan, *Zadevi Smolnikar ob rob* and B. Smolnikar, *Zlate depuške pripovedke*.

<sup>37</sup> In one of the appeals The Slovene Writers’ Association says: »The plaintiffs’ claim that a story ‘describes me, but untruthfully’ is an absurd contradiction. If a story describes me untruthfully this is at most the evidence that it does not describe me.” This argument confuses the subject of the utterance with its predicate: describing someone untruthfully is a definition of a lie and a mistake and of fictive utterance about real person.

<sup>38</sup> There is a type of slovene religious folk songs called Golden paternoster which says that Jesus on the way to the mount Golgotha crossed the river Danube – this is a mistake, not fiction.

<sup>39</sup> Lie is a false statement made with intent to deceive, while fictional statement about actual people is also a false statement but with intent not to deceive (authors usually signalize that their text is fiction). Mistake is unintentional false statement.

truthful. Should courts in cases like Smolnikar inquire if the writer is lying is a question for legal theory and not literary theory: legal expert Posner (1998) says that although the literary defamation is possible, maybe it would be proper to immunize unintentional defamation of persons when they occur under fictional names.

4) **“All works of literature are allegories of universal human situations.”** The *principle of charity is connected with the question of allegorism. That purpose of literature is to be an allegory and not a story about real people was the most sound and valid argument in favour of Pikalo and Smolnikar. But it also had some disadvantages because it was put as universal statement: purpose of all literature is to be an allegory and its aim is never to speak of real people and events (one of newspaper titles is illustrative I recognized myself in Dostojevsky’s novel Idiot: who can I sue?) and even when it refers to real people its aim is never to give true information about them*<sup>40</sup> and therefore we *must* read all novels as allegories. Because all literature is allegory it is not necessary to read the novel to know that it does not speak about Nakrst family<sup>41</sup>. – These universal claims are not true: not all novels, not all literature are allegories, some (literary) autobiographies, memoirs, diaries are not and even when they are, one of their aims could also be to speak about actual people and to give true information about them. That true life stories are more valuable than pure fictions is an important part of Smolnikar’s poetics<sup>42</sup>.

Smolnikar’s novel is both, an allegory of emigration for non locals and a true story of Nakrst for locals. But what are the exact implications of this fact? Certainly there is a difference between writing *about* someone (in auto/biographies, diaries etc.) and taking someone as a *model* for allegory, an important legal distinction. (One of the tasks of literary historians was always to inquire about the models.) But what exactly should a reader who recognizes the models do? Should he pretend that it is saying nothing about those people? Or should we say that when the text refers to historical or publicly well known people we are asked to recognize them but if it is about our neighbours we should ignore that? Should the reader who knows the family Nakrst *believe* that every possibly un-true sentence is fiction and not a lie? Probably many readers do exactly that: we accept a maxime (which can be called a fictional contract or fictional stance or allegorical stance) that literature does not lie. But this is just a maxime and not a rule,

<sup>40</sup> M. Juvan, *Fikcija in zakoni*, p. 13; M. Juvan, *Zadevi Smolnikar ob rob.*

<sup>41</sup> M. Juvan, *Zadevi Smolnikar ob rob.*

<sup>42</sup> B. Smolnikar, *Naši umetniki pred mikrofonom* [radio interview 2016].

it is a sort of ethical principle (a version of the *principle of charity*) and its application depends on each particular text. When one of the Smolnikar's characters is described as once cooperating with the Nazis – could local readers and members of the family accept this as a fiction? Probably not: we can not control our own beliefs (i. e. I can not believe what I do not believe) and feelings (i. e. I can't say that I'm not offended when I am) but we can to some extent control our actions: an offended reader can decide not to press charges when he is falsely portrayed in a work of literature.

### Conclusion

Does Smolnikar's novel speak about family Nakrst and did she intend to show them in bad light or is it just a fiction, a possible world, an allegory? etc. – all these are empirical questions, inductive and not deductive questions and cannot be answered without studying the novel and the judicial documents (which Smolnikar published twice in her books 1999, 2004). There are no a priori answers to these questions. Smolnikar's novel is part fiction (fictive dialogs, characters' inner thoughts and imagined private events) and part reality and was intended to be an allegory of Slovene emigration and not just a story of a certain family. An important issue is what is the narrator's or implied author's attitude towards the characters – is it positive or negative? A good narratological analysis could answer this question.

Aleksander Bjelčevič

#### **Truth and Lie in Literature: Slovene Writers Sued for Slander**

In 1999 novelist Breda Smolnikar was sued for defamation in her novel *Ko se tam gori olistajo breze* (When the Birches Up There Are Greening) by certain family Nakrst. Smolnikar received broad public support. In public defence different arguments were in play, the most frequent were trying to prove that the novel does not speak about the family Nakrst because (a) all literature is fiction and all literary characters are fictional beings; (b) similarity between literary character and a real person is always a coincidence; (c) all literature is a possible world and refers to people's counterparts which are connected to real people only by transworld identity relation. In article I try to show that these arguments are false: (a, b) literature sometimes refers to real people and thus the question whether a certain character is fictitious or real is an empirical question and not a question of poetic principle, can in the case of Smolnikar be resolved empirically (she published all judicial

documentation with detailed descriptions of the family Nakrst); c) the possible world argument is contradictory because it blends two opposite interpretations of possible worlds (the Transworld identity interpretation and the Counterpart interpretation). Dealing with these argument I define fiction as follows: a) literary work becomes work of fiction when it contains at least one fictional being; b) Fictional being is a non-existent being which is intentionally created as such; c) whether or not a character is fictional is on author to decide (not the reader). In B. Smolnikar's case the similarities between characters and the portrayed family are so numerous that no coincidence is possible. In the year 2007 Slovene Constitutional Court decided that the defamation was not deliberate and Smolnikar was declared innocent.

**Key words:**

literature, defamation, fiction, lie, possible worlds, counterparts, trans-world identity

**Słowa kluczowe:** literatura, zniesławienie, fikcja, kłamstwo, możliwy świat, odpowiedniki, transświatowa identyczność