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## Legal Regulation and the State Archival Service Control over Private Archives Activities in Belarus

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*This article is devoted to analysis of Belarusian archival legislation and is specially focused on the problems of organization of private archives (i.e. archives of non-governmental organizations, enterprises and institutions). According to the Law "On the National Archival Fund and Archives in the Republic of Belarus" all the organizations, institutions and enterprises of Belarus, irrespective of their forms of ownership, are obliged to observe the norms and requirements submitted to the procedure of work with documents, to its processing, movement and storage. They must create archives and preserve the documents, originating from their activities, during the disposal date marked in a special regulatory legal act. The State Archival Service of Belarus controls the activity of private archives and conditions of documents preservation in them.*

**RYBAKOU, Andrei, Regolamenti legislativi ed il servizio di controllo dell'Archivio di Stato sulle attività degli archivi privati in Bielorussia. Atlanti, Vol. 17, N. 1-2, Trieste 2007, pp. 173-177.**

*Questo articolo analizza la legislazione archivistica della Bielorussia focalizzandosi particolarmente sui problemi organizzativi degli archivi privati (ossia archivi di organizzazioni non governative, società ed istituzioni). In ottemperanza alla "Legge sul Fondo Archivistico Nazionale e sugli Archivi nella Repubblica di Bielorussia", tutte le organizzazioni, istituzioni e società di Bielorussia, a prescindere dal loro stato o proprietà, sono tenuti ad osservare le norme ed i requisiti relativi alle procedure di lavoro con il materiale documentale, al loro trattamento, movimentazione e deposito. Debbono istituire un archivio e conservare la documentazione che si origina dalle loro attività, durante il periodo di scarto elencato in un apposito regolamento legale. Il Servizio Archivistico di Stato di Bielorussia con-*

Declaration of Sovereignty of the Republic of Belarus in 1990 and the following refusal from state monopoly in economic relations have led to considerable changes in social and economic sectors. Transfer to regulated market relations resulted in launching of large quantity of non-governmental (private) institutions. On the one hand, many state enterprises were privatized, on the other new economic entities originally based on private capital have appeared.

The said changes posed before the State Archival Service a number of crucially new problems, which have called for both legislative and scientifically methodological solution.

A new archival legislation has been created taking into account present-day reality and perspectives of development of interrelations of the society and archives. A new law of the Republic of Belarus *On the National Archival Fund and Archives in the Republic of Belarus* was issued on October 6, 1994 (an updated version since January 6, 1999). Besides, a set of documents regulating the most important aspects of document handling in organizations has been worked out: they are reflected in state laws, decrees and edicts of the President of the Republic of Belarus. It should be noted that the said documents are either initiated by the Belarusian State Archival Service or compiled with its direct participation.

Here we have to take into account that the concept of legislation does not only include top state legislature documents like laws, decrees, edicts, etc. Regulatory legal instruments issued by ministries and similar state bodies within their competence are also referred to it. Such legal instruments become mandatory for execution by all the Belarusian organizations after compulsory legal expertise at the Ministry of Justice and state registration in the National Register of Legal Acts of the Republic of Belarus. The state bodies authorized to issue regulatory legal acts include the Ministry of Justice, which incorporates the Department of Archives and Records Management (which had the status of an independent state body as the Committee on Archives and Records Management before May 2006).

The law on archives states that the National Archival

Fund (hereafter NAF) comprises governmental and non-governmental sections. A non-governmental section consists of archival funds and documents owned by the enterprises, institutions and organizations in collective and mixed ownership, legal and natural persons and public associations since the moment they are duly registered.

Article 25 states that all Belarusian enterprises, institutions and organizations are obliged, irrespective of the type of ownership, to observe standards and requirements of documents handling, movement and storage. The preservation of the documents created as a result of activity of non-governmental organizations is a responsibility of their owners, that is these private institutions themselves. To preserve the documents, non-governmental organizations are to make archives, which shall be regulated by the same requirements as for the state sector archives. The legislation regulates practically all aspects of the activity of such archives including files compilation and execution standards, procedure of handing the documents over to archives, and organization of accounting and finding aids in the archives.

Setting the unified principles of archives activity for governmental and non-governmental organisations allows the State Archival Service bodies to influence essentially the formation of the National Archival Fund. Each state archives runs its own source list of this particular archive, which includes the organisations, whose documents are selected for permanent state storage. Such organisations are, as a rule, state-owned structures, whose documents are the property of the State. The state archives have the right to decide on the list of such organisations, select their documents for state storage, as well as to effect permanent control over its preservation conditions in organizations. It allows reflecting in the best way possible the history and major stages of the life of the country and the society in the archival funds.

The source lists, however, also include non-governmental organizations, primarily those incorporated by transformation into a joint-stock company. All in all 4,270 non-governmental organizations, as well as 6,848 public associations of the country have been included in the source lists.

In the conditions of privatization and appearance of a large quantity of non-governmental organizations the archival legislation provides for the variety of forms of co-operation between them and state archives, first of all on contractual basis. Article 15 of the Law on the National Archival Fund envisages the transfer of the documents of non-governmental organizations having scientific and historic value, to state archives with mandatory reimbursement to the State for the expenses on its storage. The procedure and conditions of the transfer of documents to state archives as well as reimbursement rates paid to the State represented by the state archives are defined by the Resolution of the Council of Ministers *On the Procedure of Participation of Organisations in Reimbursement of Costs of the Storage of Documents in State Archives* dated January 31, 2000. The application

*trolla l'attività degli archivi privati e le condizioni della conservazione dei documenti in essi.*

**RYBAKOU, Andrei, Zakonske omejitve in kontrola državne arhivske službe pri zasebnih arhivih v Belorusiji. Atlanti, Zv. 17, Št. 1-2, Trst 2007, str. 173-177.**

*V prispevku avtor obravnava arhivsko zakonodajo v Belorusiji in v tem pogledu vprašanja organizacije zasebnih arhivov. Ta nastajajo zaradi zakona, ki ga morajo spoštovati vse beloruske organizacije, institucije in podjetja, prav tako pa morajo spoštovati standarde in se zavzemati za pravilno nastajanje dokumentarnega gradiva. Vse to preverja beloruska državna arhivska služba ne le v državnih, temveč tudi v zasebnih arhivih.*

of the owner of the archival funds or the documents is the basis for conclusion of a contract between him and the state archive.

Please, note that the state archive does not always conclude the contract with the owner of the documents from the NAF non-governmental sector. Among the conditions are availability of free space in the archives, qualification of experts for the adequate scientific and technical handling of documents, etc.

At the same time, the owners of the documents referred to the NAF non-governmental part may, in coordination with the State Archival Service, transfer their documents to the State ownership. The transfer of title is confirmed by a contract with indication, if required, of storage conditions and the procedure of documents usage. No reimbursement to the state archive for the storage of the non-governmental sector documents is envisaged in this case.

Article 15 of the archival law also provides for the transfer by the legal or natural person of property right for non-governmental sector archival documents to another proprietor. For example, non-governmental organization may sell, grant or otherwise hand over its archival documents to another non-governmental organization. The only limitation of such transfer of title is the ban on the taking the archival documents out of the country.

In order to ensure safety of the documents of the NAF non-governmental part transferred to the new proprietor, a special provision is included in the archival law obliging him to sign a protection commitment, in which he undertakes to provide preservation of the documents acquired. On May 17, 2000 the Committee on Archives and Records Management approved the *Rules of Issue of Protection Commitments at Transfer of Title for Archival Documents of Non-governmental Part of the National Archival Fund of the Republic of Belarus*. Signing of this commitment shall not limit the title of a new proprietor in regard to the ownership, use or disposal of the documents acquired. He may fully utilize these documents, issue publications on them, make copies, use for commercial purpose, as well as submit them to other organizations on loan basis.

The protection commitment is to be signed with the archives in charge of the area where the documents will be stored. The profile of the documents acquired shall be taken into account. For example, if scientific and technical documentation is a subject of sale, the protection commitment is signed with the Belarusian State Archives of Scientific and Technical Documentation, in case of audiovisual documents the party is Belarusian State Archives of Audiovisual Documentation.

In case of transfer of archival documents to a new proprietor the owner who has signed the protection commitment shall inform the state archive well in advance before the deal because the State has the pre-emptive right to buy these documents.

The Belarusian archival legislation also regulates the issues of ownership of the archival documents in case of privatization of organizations. According to Article 16 of the Law the archival funds and documents of the privatized state organizations referred to its activities before privatization are left in the NAF governmental part regardless of the location of their storage. In order to regulate the issues of further storage of the documents of privatized organizations the *Regulation on Procedure of Accounting and Storage of the Archival Documents at Privatisation of State Property* was elaborated in 1999 by the Committee on Archives and Records Management and adopted in co-ordination with the Ministry on State Property Management and Privatization.

As per this Regulation the documents of the privatised organization created from the moment of privatization, shall be included in the NAF non-governmental part, that is this organization will be their owner and it will provide their storage in accordance with legislative requirements. To decide on the further pre-privatisation documents storage, the State Archival Service bodies inspect the state of the documents at the moment of privatization and make the corresponding conclusion.

Thus the transfer of the documents of non-governmental organizations to the state archives is effected on contractual basis. Though contractual relations imply mutual interest and consent of the parties (both state archives and a non-governmental organization) and do not guarantee high-quality replenishment of state archives holdings with documents of the NAF non-governmental section. Practically the only guaranteed source of the NAF non-governmental part documents is transfer to the state archives of the documents of liquidated non-governmental organizations. As per the Belarusian legislation the documents of liquidated non-governmental organizations having no legal successors, are transferred to the State. A special network of regional (district and city) archives has been created in Belarus to store the documents of liquidated non-governmental organizations, first of all on personnel (employment record, wages and salaries, etc.). One hundred and twenty-five such archives are organized all over the country today.

Such procedure, of course, does not guarantee to the state archives a stable sourcing of corresponding documents and does not allow forecasting this process. In this situation the state archives, which have been used to freely compile their funds are extremely interested in regulation of records management in non-governmental organizations.

This aspect of relationships between the state archives and non-governmental organisations has most clearly reflected in the determination of the disposal date of documents. In 2001 and 2006 the Lists of Documents with indication of their disposal date were adopted as regulatory legal acts. More than 2,000 types of documents and files, which may be created in the organizations of all forms of ownership and various types of activity were included there. According to these Lists, an equal disposal date was established for documents of non-governmental organisations and of the state-owned ones, which were included into the source lists of state archives. It means that at present stage absolutely all non-governmental organisations

are obliged to ensure a permanent storage of the established set of documents. Apparently, this norm is a provisional one and will not work in the long-term outlook. On the one hand, not all the documents of the state-owned organisations will be of interest for the state archives by their qualitative structure, and on the other hand, the permanent storage of the ever increasing volume of documents of non-governmental organisations will be impossible from the financial and technical point. The appraisal of the value of documents of non-governmental organisations, for which a permanent storage has been established today, will be inevitable. The State Archival Service, however, reserves the right to decide in future, which documents of non-governmental organisations will be stored permanently, and which may be destructed with no damage to the NAF qualitative structure.

Strict regulation of the issues of documents preservation in organizations, including non-governmental, and an active participation of the state archives in this process have been caused by various reasons, and in many respects is deeply rooted in the socialist past.

Thus, the State Archival Service of Belarus has an effective tool to render influence on the structure, contents and preservation of documents in various institutions through issuance of instructions, rules, regulations and other regulatory documents on archives and records management. Practically all the stages of the life cycle of a document are thus regulated, from elaboration of its draft to its handing over for archival storage or destruction.

One more essential peculiarity of this process in Belarus is that the State Archival Service extends its control over the activities of non-governmental organizations, which must observe, like the state-owned ones, all the legislative requirements to records keeping and archival storage.

An administrative responsibility is established for violating the requirements of the legislation on records management and archival storage of documents. Fines are provided for the most serious breaches in this sphere. Fines can also be imposed, in accordance with the Administrative Code of the Republic of Belarus, for unlawful destruction of documents or inflicting irreparable damages on them. The control over these issues is assigned to the State Inspection of Archives and Records Management operating within the Department. The activity of the Inspection is regulated by the law and a special Government resolution.

The inspections aim at control over justification of documents creation as per the present legislation, observance of requirements to the documents filing in office work, right selection of documents in the organizations for further storage and destruction, etc.

Thus, solving practical problems of NAF formation the state archives may influence the qualitative composition of both governmental and non-governmental NAF sections using their control functions. Non-governmental organizations are obliged to ensure storage of the documents created in the process of their activity, within a given period, as well as observe the requirements to the archival premises, storage procedure and use of archival documents, elaborated by the State Archival Service.

