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**PEJOVIĆ, Snežana, Archival Legislation and New Social and Technological Changes (Montenegrin Experiences). Atlanti, Vol. 16, N. 1-2, Trieste 2006, pp. 43-57.**

*Original in English, abstract in English, Italian and Slovenian, summary in English*

*This article deals with problem of non-harmonization of archival law with hasty transitional, technology and other social changes which were being happened especially in the countries of South and East Europe during the last decade of twentieth century. From the experience of Montenegro the paper talks about consequences for archival service, which have arisen because of the non-amended archival law, its insufficient elaboration through by-laws, non-harmonization of archival legislation with actual social and technological changes, international regulations and standards. In addition, it deals with negative consequences because of political influence on the organization of Archives, on the development of archival activity, on the employment and training of archival staff and so on, as well as on the process of drafting the new archival law and on activities of the international community in offering assistance to the countries in transition.*

**PEJOVIĆ, Snežana, Legislazione archivistica e nuovi cambiamenti sociali e tecnologici (esperienze nel Montene-**

1. After World War I, the Kingdom of Serbs, Croats and Slovenes was founded, later Kingdom of Yugoslavia, which covered the same territory which will be covered by Yugoslav federation after World War II.

# Archival Legislation and New Social and Technological Changes (Montenegrin Experiences)

## Introduction

In the nineties of the past century, in greater number of European countries, especially in the countries of South and East Europe, important changes were being happened on all levels: social, political, economic, cultural, scientific, particularly in the field of expansion of information technologies. Archives and archival activities in general, as it is known, are closely connected with all changes in the society. These changes have left a noticeable trace on archival material and archival profession, especially in those countries with complex state structure, as it was the Socialist Federal Republic of Yugoslavia (hereinafter referred to as SFRY). All newly created states in the territory of the former Yugoslav federation were at the same time exposed to changes of property relations and radical transformation of the political and legal system. Contrary to the other East European countries, many of the said states passed through the war or were several years under the UN sanctions and in complete isolation, as it was the case with Montenegro. Inter-ethnic and religious conflicts have left the most drastic consequences concerning the preservation of archival material, like a unique and irretrievable part of cultural heritage. Total break in communication and collaboration between newly formed states of the former Yugoslavia, which for about seventy years<sup>1</sup> had existed in the common state, social and economic system, especially after 1945 in SFRY, have reflected extremely unfavourably in archival profession, which was previously being developed in all republics in almost identical organizational and functional system. Regardless of the differences among former Yugoslav republics (linguistic, historical, cultural), there was one strong and uniting factor. That factor was the unified state with defined federal functions, as well as different forms of federal, professional associations such as the Yugoslav Association of Archivists. Although the republics were independent regarding the organization and legal regulation of archival service, all republics were following the recommendations and regulations made by this federal association. They were also participating in common projects, which were promoting archival profession throughout the Federation.

The disintegration of SFRY that was going on in the maelstrom of antagonism, denial of national, cultural and religious identity among newly formed states, as well as within the same and, what was worst, with armed conflicts that have destroyed that formerly mainly united cultural space. The Republic of Montenegro, which has changed many times the state status during its history<sup>2</sup>, remained in the newly formed state named the Federal Republic of Yugoslavia, with non-defined state, national and cultural identity. The sanctions of the international community, hasty collapse of the economy, war in then region and general poverty, were contributing to the marginalizing of archival activity. At the same time, the over-stressed politicization in all segments of the society and strengthened etatism, sent to the other plan the development needs of archival profession. In those circumstances and under the strong political pressure coming from Belgrade<sup>3</sup>, especially from the federal archival circles, the new *Law on Archival Activity*<sup>4</sup> was adopted in the Republic of Montenegro. Pursuant to the Law, the centralization of archival service was carried out with the abolishment of the activity of the professional association of archivist. Legal decisions didn't aim at setting up the archival service according the newly created changes and according to the structure of archival material, but they were meant to prolong, among other things, the life of one federal institution - the Yugoslav Archives<sup>5</sup>. We emphasize that this archives had never had a competence in the SFRY on the federal level. It was the archives which was taking care of the records of the federal bodies and institutions.

Thus, the politicization in Montenegro did not bypass the archival profession either. It was most evident in rush proceeding of adaptation of new archival law and reorganization of archival service. These actions were not a product of professional consideration of reality, undertaken analyses and conclusions, but it was a directed political act.

In the following part of this work, taking in consideration the key deficiencies of such adopted archival law, we want to point out to the fact how irretrievably damaging for such a sensitive area as archival profession is, to ignore the character and structure of archival material in the new social, economic and technological changes and to give priority to political influences. We believe that similar process was occurring in many countries which were passing or pass through transformation of the state and social order or, as one usually says, the transition.

### **Current regulations in the archival activity in the Republic of Montenegro**

The Republic of Serbia and the Republic of Montenegro founded a new common state, the Federal Republic of Yugoslavia (hereinafter referred to as the FRY)<sup>6</sup> in April, 27<sup>th</sup> 1992. In October<sup>7</sup> the

gro). *Atlanti*, Vol. 16, N. 1-2, Trieste 2006, pp. 43-57.

*Questo articolo tratta del problema della disomogeneità fra la legislazione archivistica ed i cambiamenti tecnologici e sociali avvenuti in particolar modo nei paesi del Sud Est europeo durante l'ultimo decennio del ventesimo secolo. Dall'esperienza del Montenegro l'articolo prende le mosse per parlare delle conseguenze per il servizio archivistico, conseguenze che si sono accresciute causa il non aggiornamento della legislazione archivistica, la sua insufficiente elaborazione attraverso leggi locali, la non armonizzazione della legislazione*

2. By the decisions of Berlin congress (1878) Montenegro was officially (de jure) provided the international recognition in full form. Up to 1910, it was a principality, and after that, the Kingdom of Montenegro. It lost the status of an independent state in 1918 by becoming part of the Kingdom of Serbs, Croats and Slovenes, later on the Kingdom of Yugoslavia, by forced and illegitimate act of overturning of the ruling Montenegrin Petrović-Njegoš dynasty. From 1945, Montenegro was the People's Republic, then becoming the Socialistic Republic with state subjectivity and legitimacy of one of six equal republics in the Yugoslav Federation. The Republic of Montenegro together with Serbia, founded the federal state named the Federal Republic of Yugoslavia in 1992. Several years later, the State Union Serbia and Montenegro was founded, and as of May 21st 2006 Montenegro is an independent state again.

3. There was a political idea to allegedly preserve Yugoslavia. It was personified in the Serbian official policy and the policy of its ruling structures, but in fact, under the cover of that idea there was the intention of the establishment of "All Serbs state". Montenegro was the only republic of the former Yugoslav federation that had remained in that utopian project.

4. „Official Gazette of the Republic of Montenegro“, number 25/92.

5. Similar process was going on in the Republic of Srpska, which together with Montenegro, during those years, was a part of the same political project. This part of the territory of the former Republic of Bosnia and Herzegovina and the Republic of Montenegro, have centralized their respective archival services in the same way. They transferred all their rights, for instance, for international contacts on the Archives of Yugoslavia, in spite previous practice and legal regulations (see: Azem Kožar, Ivan Balta, *Pomoćne istorijske znanosti i arhivistika*, Tuzla 2004.). We emphasize that the Republic of Serbia has retained its previous organization and the existing network of archives in its territory.

6. The Constitution of the new state was adopted. The political idea was for the FRY to be a legal successor of the former Yugoslavia and that the territories of other republic populated with Serbs would join into it. In Montenegro, a rather problematic referendum, from the standpoint of its legitimacy, was organized related to Montenegro remaining in the two-member federation.

7. It should be emphasized that among all subjects in Montenegro the activities of which were related to the protection of cultural heri-

*one archivistica con i presenti cambiamenti sociali e tecnologici e le direttive e gli standard internazionali. In aggiunta a ciò, l'articolo tratta delle conseguenze negative dovute alle influenze della politica sull'organizzazione degli archivi, sullo sviluppo dell'attività archivistica, sull'impiego e la formazione di personale archivistico e così via, così come sul processo di redazione di una nuova legislazione in materia di archivi e sulle attività della comunità internazionale volte a fornire assistenza ai paesi in via di transizione.*

**PEJOVIĆ, Snežana, Arhivska zakonodaja po novih socialnih in tehnoloških**

tage, it was only the archival institutions that were radically reformed and only in the area of archival activity, a new law was adopted.

8. For example, it was prescribed imprecisely what archival activity means, than it wasn't determined that the State Archives performed affairs concerning historical archival material conserved in territory of the Republic, it was prescribed that the owner of archives carried out disposal on the basis of the General records schedule made by the Archives instead of the records owner, and so on.

9. „Official Gazette of the Republic of Montenegro“, number 27/94.

10. The State Archives is unique institution in the framework of which exist departments (in total 24). Certain number of them used to be independent archives.

11 On the occasion of reorganization of the archival service in Montenegro, no attention was paid to previous status of professional staff, their previous education, professional titles, which was in accordance with the particularity of archival profession, organization and needs of the archival service in Montenegro. Current rules for the employed in public administration apply linearly to archival profession; on the occasion of employment care is not taken of the education profile (for example, historians, philologists, lawyers), conversely, different profiles are employed, often those people who are not familiar with archival profession. After the reorganization, the most qualified staff left the Archives at once and this tendency still continues. Standard for the number of employees within the archival departments is not the value, characteristic and quantity of archival material or quantity of work on the protection of current records stored outside the archives, according to its value. People are employed without any plan, but with political recommendations, especially for the head of Archives or departments. In addition, different restrictions regarding staff reductions in the public administration required by the international community additionally aggravates the situation. That hinders development policy within the Archives to be made for a longer period of time which is necessary for creating archival staff in most countries and also in Montenegro.

new Law on archival activity had already been adopted which prescribed the establishing of only one unified archival institution - the State archives of Montenegro. It was done in spite of warnings of specialists that the network of archives should be organized in accordance with character, structure, value and concentration of archival material and that archival service should be harmonized with all actual social and other changes. This legal act presented discontinuance in relation to previous archival legislation and its tradition in Montenegro, as well as to the former way of organization of archival institutions and archival service. The hastiness in the adoption procedure, the ignorance of the matter and lack of consultations with experts during the drafting of the Law, motivated by political, and not professional reasons, have caused glaring errors to be made<sup>8</sup>. Two years later, the Law had to be changed and amended in 10 articles<sup>9</sup>, which was not explained as the lack of professionalism during its drafting and as a grave error, but as the need for the upgrading of the archival activity in Montenegro. Of course, these amendments did not essentially influence the improvement of the basic archival legal act.

The State archives, as the only subject in Montenegro which carries out archival service in the territory of this Republic<sup>10</sup>, became an administrative organization. In this way very large authorities were given to the State Archives, i.e. to the director and he, in the very strictly established hierarchy within the framework of the archival institution, can organize archival service independently with formal approval of certain public administration bodies that, as a rule, do not know much about archival science. The reorganization according to which the Archives was to pass from the field of culture to the one of public administration, was being explained with the need for better protection of archival material through inspection supervision. It has never been realized in practice. Working 14 years within the framework of the public administration and following strictly its regulations and its internal transformations, the archival service has stagnated in all its segments. Instead of adopting the new and amending the existing archival legislation according to current changes in the region and the changes related to archival material itself, it remained unchanged. Except for two regulations related to current records, no other bylaws were adopted in this period of time, which would at least alleviate a little the deficiency and expiration of the archival law from 1992. The regulations from the public administration that are apply in the archival profession, very often have predominant importance in relation to archival legislation. The environment with emphasized etatism has consistently favored the observance of regulations from the domain of public administration, so that the State archives has not and still does not use legal possibilities from those regulations which additionally regulate specific branches within the public administration such as archival profession. This fact has had very drastic consequences on all archival activity in Montenegro. In the first place, it has had a negative effect on the staff structure<sup>11</sup>, then on the activity of the comprehensive protection of archival material in the whole territory of the Republic, on the process of mo-

dernization of protection and description of archival material, on the quality of records management, and so on.

The worst consequence of such reorganization of Montenegrin archival service is that the archival profession within the framework of the public administration has not obtained much in the sense of its importance as its “reformers” - in this case politicians, used to promise; on the contrary, it is greatly neglected on various grounds. This is reflected in its extremely bad financial situation in relation to the rest of the public administration. Thus, archival activity is lagging behind them, not only in the sense of creating the archival staff, but in relation to technical equipment of archival buildings, quality of primary protection of archival material stored outside and within the Archives, application of international standards of protection, description and usage of archival material, drafting and implementation of then unified information system in the Archives, etc.

In the meantime, Montenegrin society passes through great changes (passing into multiparty and parliamentary system, ownership restructuring, several years' long wars in surrounding countries, demographic changes, poverty and international isolation, undefined national and cultural identity within its own territory, technological revolution with more and more mass production of electronic records etc.). Several times the political organization of the state changed: two-member federation becomes transformed into the state union Serbia and Montenegro, until the proclamation of independency of Montenegro. However, archival legislation does not follow all these changes and in Montenegro the archival law from 1992 is still effective, without any changes or amendings.

### **Review of deficiencies of present archival legislation and consequences it produced concerning long-term development of archival profession**

As we already said, present Montenegrin archival law did not appear as the product of the professional appraisal of value and condition of archival material and development needs of archival service in the Republic, but it was politically ordered or even imported model of archival legislation<sup>12</sup>.

The most important deficiencies of the only effective archival regulation in Montenegro we shall classify in several items, pointing out to consequences that have left permanent negative trace on the development of archival profession. It can serve as a useful example as to how things should not be done.

Because of everything mentioned above, it is clear that this archival law is out of date, not in line with the condition of archival

**spremembah – črnogorske izkušnje. Atlanti, Zv. 16, Št. 1-2, Trst 2006, str. 43-57.**

*Razprava obravnava vprašanje neskladnosti med arhivsko zakonodajo in naglo tranzicijo, novimi tehnologijami in socialnimi spremembami, ki so se zgodile nedavno v državah južne in vzhodne Evrope. V prispevku je zato govor o posledicah, ki so se zaradi teh sprememb zgodile v Crni Gori. Gre za arhivsko zakonodajo, ki ni bila spremenjena in ne izboljšana, saj ni prilagojena novim socialnim in tehnološkimi spremembam, prav tako pa tudi ne mednarodni zakonodaji in standardom. Zaradi so se pričele pojavljati v arhivih negativne posledice, ki jih daje politična struktura. Posledice tega se kažejo v premajhni arhivski aktivnosti, v zaposlovanju, prav tako pa tudi v pridobivanju znanja, da ne govorimo o neznanju, kar zahteva nove standarde, nepoznavanje mednarodnih arhivskih dogodkov in okolja, ki bi moralo vplivati tudi na dežele v tranziciji.*

#### **SUMMARY**

*Political and structural transition that was being going on in the countries of the South and East Europe during the last decade of the twentieth century had its unavoidable influence on the care for cultural heritage and on its protection. All the changes in a society mostly reflect on archival heritage and the whole field of archival profession. It was especially obvious in those countries with complex state structure, as it was the case with the former Yugoslav federation and newly created states after its disintegration. Montenegro is one of them. Along with the transitional changes, which were going on in other countries (change of state structure and passing into parliamentary and multiparty political system, hasty privatization with insufficiently elaborated legal protection), Montenegro was passing through a period of international sanctions and complete isolation. What is more, there were wars in its surrounding, demographic changes, sudden impoverishment with unhealed inflation, undefined state status and its own national and cultural*

12. Sometime earlier, similar manner of the organization of archival service was performed in Macedonia which has totally different structure of archival material and different needs as regards the development of archival network than it was the case with Montenegro. However, the drafters of Montenegrin archival law cited continuously the example of Macedonia. In addition, the identical case was in the Republic of Srpska which was considered at that time as an unofficial part of the newly created FRY.

identity. The specificity of these changes were putting an additional burden onto archival activity that was completely subject to the influence of the strengthened etatism and politicization.

In the paper, it is through the example of Montenegro that the author wishes to show all problems that can appear when politics overcomes profession, in this case the archival one. The drafting of the actual archival law in Montenegro in 1992 was not preceded by the analysis of character, structure, value and concentration of archival material, nor was the organization of archival network performed. Furthermore, the protection of archival heritage was not established in accordance with the analysis.

In Montenegro, after the disintegration of Yugoslavia, the hasty reorganization of archival service occurred. There were political reasons for this, not the professional ones. For that purpose, the new Law on archival activity was adopted (1992) as an imported model of archival legislation and ordered political act, drafted without prior consultations with professionals and experts - archivists. Analyzing deficiencies in archival legislation in Montenegro, which has been effective for 14 long years already, it was pointed out what consequences occurred with regards to the preservation of archival cultural heritage when the incompleteness of the archival law is in question, unelaborated through bylaws, without adjustment with actual social, economic and technological changes. The actual situation in the archival activity of Montenegro, which has occurred after many years of vacuum in archival legislation, should be determined and analyzed in details. However, according to all indicators it is necessary to undertake urgent measures with the purpose of overcoming present state. What is evident, without deeper analysis, is that the organization of archival service is not functional. The protection of archival material in the whole territory (in registries and in archives) is insufficient; there are no long term or short term development plans of archival activity; professional staff is not created; there is no application of modern methods and standards in the description of archival material nor technical and technological support etc. The greatest problem

service in Montenegro and in many parts practically inapplicable.

► The most evident example of its obsolescence is in the provisions that regulate penal measures. They state the currency of the former sate (dinar), which has already, for a long time, been out of use in Montenegro<sup>13</sup>. Since the function of supervision is not defined (it is not the issue of inspection supervision), these measures do not apply. The consequence is inefficient protection of archival material and current records.

► According to the Law, total reorganization of archival service in Montenegro has been performed. However, in the procedure of the abolishment of archival institutions, the Law has violated former legislative practice and did not respect real situation. (It did not prescribe for the abolishment to be done with the approval of founders; in the process of the abolishment, independent and developed archival institutions were equalized with some archival departments from non-archival institutions; local government has no influence on archives located in its territory). This has had a very bad effect on the future development of archival profession.

► There are no provisions in the Law for the abolishment of archival institutions, nor the ones which anticipate the establishing of the new archives. Thus, in practice there are subjects that possess valuable archival material, but they are not registered as archives nor do they have this possibility. Considerable number of owners of precious archival material (often of zero category) have remained outside the Archival law with completely unsolved and practically illegal status (archives within museums, libraries, the Historical institute, University et al., then archives of religious denominations and archives of private owners). The Archival law doesn't determine the supervision and care for this precious archival heritage and the Archives do not perform it.

► The State archives has formally and legally been moved from the field of cultural institutions to the public administration domain. In the development policy of the Archives, the focus has been put on administrative jobs and tasks, while its cultural, scientific, educational activity has been pushed into the background. What is more, its administrative function has not been exactly and clearly defined by the Law (the supervision of records does not have the power of inspection control and the Archives do not have the authority of other state bodies in conducting administrative measures). The supervision of the Archives relies on advisory control mostly, as when archives were cultural institutions.

► According to the Law, only the Archives have changed their status, contrary to other institutions which care about moveable and unmovable heritage (only the Archives do not have the status of a cultural institution). Comparing the Archives as an administrative organization with other cultural institutions, one can notice that the others have better opportunities for professional development and advancement in professional sense, thus their possibilities for efficient protection of cultural heritage are greater.

► Competency over the work of Archives has been transferred by the Law to the Government<sup>14</sup> which, because of its important

13. The official currency in Montenegro from 1997 to January 2002 was German mark which was then replaced by Euro.

14. Since 2004, the competence has been entrusted to the Ministry of culture.

obligations, has not been able qualitatively and competently to follow the professional work of the Archives and to promote archival activity. (The negative consequences of it are huge authorities which were vested in the director, strict observance of the hierarchy within the Archives, disabling of professional communication within and outside the Archives, abolishment of the professional association of archivists, lack of stimulation and realization of professional training, neglecting scientific, cultural and educational functions of the Archives etc.).

► The Law defines generally the part of collective memory that should be saved. (In Montenegro, appraisal and categorization of archival material have not been carried out either with creators, or owners or in the State archives. Thus, in the archival law there are no special provisions for preserving of diverse categories of archives according to their significance. Wide and general defining of the category of creators and owners creates a confusion as to which is the archival material that should have the highest level of protection. This makes it difficult to establish clearly and perform in a high quality way the protection of archival material and to perform the acquisition policy in a proper way. Thus, it happens in practice that the most valuable material does not have adequate protection, while practically worthless archival material ends up being received and preserved in the State archives). The application of new experiences and standards in the appraisal of records or categorization of creators and owners has not envisaged.

► The rules for determination which archival material is cultural heritage are not prescribed in the Archival law, as well as its special protection and storage. (This area is regulated by the *Law on protection of cultural heritage of the Republic of Montenegro*<sup>15</sup>. According to it, the archives in Montenegro should determine the quality level of cultural heritage for archival material. However, the archival legislation does not regulate additionally this question, and it is even not mentioned in the part of the Law concerning the duties and obligations of the State archives).

► Because of the expired law, there has been no harmonization with other laws adopted in the meantime in Montenegro<sup>16</sup>, or with the international conventions signed by Montenegro either, which are also related to archival material (this is most obvious with provisions that regulate the use of archival material according to which it can be used only after the term determined by the owner, which is the survived practice from previous socialist period).

► The level of the maturity of archival material containing important personal data and the one which is operative for a longer period of time (history of diseases, some court records et al.) has not been precisely determined. In the Montenegrin archival law there is only the term for taking over the archival material to archives, which is 30 years or 50 in some cases.

► There is no regulated level of classification of secrecy and confidentiality of documentation in registries, containing the data of the state, e.g. national importance (national security, economics et al.). This creates the problem as to how to regulate the usage when the archival material with such data gets to the Archives.

*is the lack of awareness on all levels (with archival staff which is professionally weak, the managerial staff in the Archives who are politically appointed persons, among the highest state officials who control archival activity and bring most of important decisions on the development of archival profession).*

*Additional problems are the requirements and pressure, which the international community sets before the authorities as the condition for joining and accession to the European Union. This, as is the case with Montenegro, presents a very complex task which has to be done in a short time, without a possibility for deeper analysis, without well thought out strategy for future application and elaboration and with the lack of high-quality training of professional staff for the realization of all new tasks.*

*All the above international requirements start, at the first place, from the harmonization of legal regulations, which encompass the field of archival profession too. In this hurrying to fulfill the conditions, in addition to all the mentioned problems, the question is how one can recognize the real state of affairs; what are personnel, technical and technological and financial possibilities for the application of high international standards and what real quality and possibility for the application of such adopted legal and other solutions will be. In the paper, this is illustrated through the latest activities of the Ministry of culture of Montenegro when drafting the new archival law. In addition, the assistance of international experts is very often discussible, as it has been presented in this paper from the experience of Montenegro.*

*One can conclude that for the countries, which pass through developmental and reform processes, a more organized international assistance is necessary in the field of archival profession, which would be realized through concrete forms of help determined in a programmatic manner.*

15. *Zakon o zaštiti spomenika kulture Republike Crne Gore*, (Official Gazette of the Republic of Montenegro, no. 47/91).

16. Law on free access to information, Law on the protection of personal data, Law on the protection secret data.

►The Law is inapplicable with regards to the protection of private archival documentation, because in the meantime property rights relations have been transformed<sup>17</sup>. (Since the Law had been adopted at the very beginning of transition process, it remained, regarding the treatment and definition of public and private records, on the level from the time of one-party society and public property. Thus, there are no provisions which define what public property in archival material is, e.g. what is private). Because of that, great number of creators and owners of archival documentation are at this moment without regular and periodical control to be exercised by competent archives.

►There are no provisions for the protection of electronic records. (In Montenegro, during the last few years, several laws concerning electronic records have been adopted in the fields not concerning the archival profession. One of the first was the *Decision on electronic payment circulation in the country*<sup>18</sup> adopted by the Council of the Montenegrin Central Bank. The next one is the *Law on electronic trade*<sup>19</sup> adopted by the Parliament of the Republic of Montenegro. One in the range of legal regulations is the *Rules on measures and actions of using and protecting electronic signature, the means for creating electronic signatures and certification systems*<sup>20</sup>. From the point of view of legal solutions in the present Law on archival activity, all these regulations are contrary to this law. They do not regulate the issues which should be in the jurisdiction of archival service (performing of supervision, appraisal of records based upon their archival value and selection, defining precisely the terms and conditions for preserving this kind of records). The inspection supervision over the work of record offices which deal with electronic records is entrusted to the *Secretariat for Development of the Republic of Montenegro*, completely neglecting the role of Archives. In that way, this kind of records is practically without proper protection after the expiration of its active life cycle. The Archives is not included in the process of shaping, creating, maintenance, saving and using of electronic records. For that reason, the archival electronic material in Montenegro has not been appraised in the proper way and is subject to permanent destruction.

►The Law has not been elaborated and amended through by-laws. During all of the passed 14 years since the adoption of the Archival law, the State archives has issued only two bylaws<sup>21</sup>. (Both of them are aimed at protecting of archival material stored outside the Archives, but they are incomplete and have the deficiencies originating from the principal legal act and the manner of organization of archival service in Montenegro. They follow the experiences of previous Yugoslav recommendations and instructions in the field of the protection of archival material stored outside the archives according to which Montenegro was harmonizing its archival activity<sup>22</sup>. Therefore, they do not contribute to the efficient protection of archives in the newly created conditions.

What is the actual situation in the archival service in Montenegro, especially after the long-term vacuum in the archival legislation, is yet to be analyzed and established in details, in order to be able to determine the guidelines for urgent action on all levels. The worrying

17. Economy transition, as a segment of total transformation of the Montenegrin society, is realized through two stages. The first one lasted up to 1996 characterized by the capital going public. After the first stage, which was unavoidable in order to provide the holder of property, the second stage of transformation started through the process of the privatization of economy.

18. Official Gazette of the Republic of Montenegro, no. 78/04.

19. Official Gazette of the Republic of Montenegro, no. 80/04.

20. Official Gazette of the Republic of Montenegro, no. 25/05.

21. 1. *The Regulation on mode of selection of archival material and disposal of ephemeral documents and delivering of archival material to the State archives of Montenegro*, Sl.list RCG br. 23/94; 2. *The Regulation on perservation of current records and archival material and transferring data on archival material to the State archives of Montenegro*, Official Gazette of the Republic of Montenegro, no. 23/94.

22. Olga B. Giler, *Priručnik za zaštitu arhivske građe van arhiva*, Titograd 1983.

issues at the moment are that archival staff is professionally weak, completely unmotivated with extremely low wages and lack of opportunities to advance in professional sense. As such, the archival staff cannot be a driving force of reforms in archival profession. With the majority of archivists, there is absolutely no the awareness on the necessity for the action on the professional level. Regarding the managerial staff in the Archives, there is a desire to keep the present situation, because it brings certain benefits to them (social position, minor financial privileges). In addition, they are not accountable to anyone, nor is there a possibility for that in the present course of events. With the competent, in concrete terms with the Ministry of culture or the Government of Montenegro, there is no proper awareness of the importance of archival service and of the role of archives in the state and society. Their activities related to archives are induced by demands of the international community concerning the protection of cultural heritage in Montenegro in general and concerning harmonization of the legislation from the field of culture with the international standards.

### ***The activities of the Ministry of culture of the Republic of Montenegro for the purpose of the adoption of the new archival law and international professional assistance***

More radical activities of the Ministry of culture of the Republic of Montenegro began a little bit more than two years ago and were being performed in the direction of regulating current situation in culture, e.g. toward more fundamental reforms. The plan was to start the process of the reform with the analysis of the present condition and establishing priority goals, e.g. with the drafting of the national report on the situation in culture. According to the plan, the process ought to be continued with the assistance and recommendations of national and international expert bodies and institutions, and with full participation of directly involved wide public as well.

In February 2004, the Government of the Republic of Montenegro adopted the final version of the “National report on cultural policy in Montenegro”<sup>23</sup>, drawn up by the Ministry of Culture and Media of the Republic of Montenegro<sup>24</sup>. It should be emphasized that the document presents the first strategic programme and action plan of cultural development of Montenegro ever to be done. In the previous period, the main feature of the development of culture in Montenegro was lack of long-term and short-term plans. There are many reasons for that, but it is enough to mention that that Ministry of culture had not been founded until 1993.

This national report has analyzed former situation in the state and non-governmental sectors and as the basic problem with all institutions dealing with the protection of cultural heritage it was stated

23.The Steering Committee for Culture (CDCULT-BU (2004)7A), February 6th 2004. The European programme of the Review of national cultural policies MOSAIC PROJECT. The Cultural policy in Serbia and Montenegro. Pars II: The Republic of Montenegro. The National Report. (<http://www.ministarstvokulture.vlada.cg.yu/vijesti.php?akcija=rubrika&rubrika=51>), 17th June 2004.

24. With the establishing of multiparty system (in 1991), for the first time in the cultural history of Montenegro, the Ministry of culture was founded. At that time, together with the physical culture. From 1993, the Ministry of culture operates as an independent ministry in the Government of the Republic of Montenegro. It started with minimum number of employees (only 10), which number remained as such within the following ten years. There were eight different Ministers at the head of the Ministry during such a short period of time. With new acts, as of 2003, its competencies were extended with the inclusion of the sector of public information.

The role of the Ministry of culture and media of the Republic of Montenegro in relate to the State archives is the supervision over legality and efficiency. The Ministry is organized in such a way that the jobs from the field of cultural and natural heritage are carried out by the Sector for cultural and natural heritage. The State archives, according to the Decree on the organization and mode of work of public administration („Official Gazette of the Republic of Montenegro“, number 54/2004, of 9th August 2004), got constituted as the administrative body, i.e. as an institute. The Ministry of culture and media has got the competence over the administrative functions of the state archives (from 1996 to 2004 the Ministry of culture only was overseeing the legality of work of the Archives) and greater authorities in relation to the previous Decree from 1993.

25. **MOSAIC: Managing an Open and Strategic Approach in Culture.** Launched by the Cultural Policy and Action Department of the Council of Europe in 1998, MOSAIC aims at creating a framework for exchanges and co-operation amongst countries in South-East Europe and at assisting them in the field of transition of their cultural policies. The objectives MOSAIC targets are cultural policy makers and administrators at national, regional and local level, representatives of the cultural sector (practitioners, managers, researchers) and civil society. Its main objectives are to: encourage a democratic and open approach to cultural policy and decision-making processes; advise decision makers in developing policies in order to cope with the challenges of democratic transition, and in maintaining cultural diversity; assist in reforming and implementing necessary legislation; encourage a multilateral approach in the co-ordination of policies, partnerships and networks; move towards a 'regional' multicultural policy and the development of intercultural skills. The participating countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Romania, Slovenia, "the Former Yugoslav Republic of Macedonia", Serbia and Montenegro and UNMIK / Kosovo.

Activity: Visit of the panel of European experts in the framework of the cultural policy review of the Republic of Montenegro. Place: Republic of Montenegro (Serbia and Montenegro). Date: 13-16 December 2003. Experts: Ms Naima Balić (Croatia), Ms Milena Dragičević-Sešić (Serbia and Montenegro), Mr Norbert Riedl (Austria), Mr Jörg-Ingo Weber (Germany), Mr Alessandro Bollo (Italy). Objectives: To gather information for the preparation of the experts' report. The report will contain a number of recommendations with the aim of contributing to the preparation of a short and medium term strategy for the cultural policy in the Republic of Montenegro."  
(See: [http://www.coe.int/t/e/cultural\\_co-operation/culture/completed\\_projects/mosaic/\\_Summary.asp#TopOfPage](http://www.coe.int/t/e/cultural_co-operation/culture/completed_projects/mosaic/_Summary.asp#TopOfPage)).

26. The Steering Committee for Culture (CDCULT-BU (2004)7A), May 6th 2004. The European programme of the Review of national cultural policies MOSAIC PROJECT. The Cultural policy in Serbia and Montenegro. Pars II : The Republic of Montenegro. The Experts' Report. (See: <http://www.gom.cg.yu/files/1087483463.doc>).

27. The official conversation with experts of MOSAIC project during the working meeting in Kotor, left impression with the author of this paper of certain misunderstanding and even superficiality related to the problems concerning the archival heritage following the presentation of the same by the present archivists.

28. It was done in spite of the fact that the fundamental objection of international experts in their Report was that there had been the lack of transparency in the proceeding of drafting and adoption of the National Report and that it should be eliminated in the subsequent implementation of the Report.

29. *The Draft of Law on Archives*, version 1, May 7th 2004. The authors are Prof. Dr. Z. Rašović i Prof. Dr. M. Ivočić.

that the legal regulation had been outdated and ineffective. The Report points out the inevitability of replacing present regulations urgently with new laws in all fields, which would be adjusted according to international standards and rules of the Council of Europe, European Union and World Trade Organization. It has also been established that numerous laws adopted in the meantime in Montenegro in other fields, are indirectly related to culture. Because of that, national cultural programmes (both short-term and long-term ones) must follow strategic documents of the Government (economic development strategy, urban plans, national program for higher education, financial and fiscal policy, etc.) and be harmonized with legislation in other fields. This Ministry report has been sent to the Steering Committee for Culture in the Council of Europe (CDCULT-B4 [2004]7A).

The experts from the Council of Europe, e.g. the Steering Committee for Culture, gathered around the project named M.O.S.A.I.C.<sup>25</sup>, offered assistance to the Ministry of Culture in the definitive drafting of the Report. They visited Montenegro in December 2003 in the framework of the 2<sup>nd</sup> phase of the realization of the MOSAIC project. They talked with numerous cultural workers and discussed also the National Report. They presented their remarks in the *Experts' Report*<sup>26</sup>. With certain remarks, they pointed out to the drafters of the National Report its deficiencies and drafted the guidelines for future activities.

Considering the treatment of archival activity in the National Report, we can notice that it is dissatisfied, because only one small chapter is dedicated to the archival science with a rather confused review of archival service history, current organization and with even some wrong data regarding, for example, international cooperation or education and training of archival staff. Unfortunately, we have to emphasize that in the framework of the said international project realization, the treatment of archival profession is not much better<sup>27</sup>, in spite of archivists' expectations.

In the realization of further activities established by the National Report, the Ministry of culture started in 2004 with drafting new legal acts in many fields, including the archival activity. However, it was done without consultation and inclusion of archivists and with complete lack of transparency<sup>28</sup>. Because of that, the result of the entire work is bad.

For drafting the *Draft of the Law on Archives*<sup>29</sup> two lawyers were engaged, and again the participation of archivist in this process was marginalized. The product of their work is the draft of law which presents compilation of articles and regulations of archival laws of some countries in the neighborhood, in the first place from Croatia. The authors of the Draft are the experts who are completely out of archival profession and not informed about its conditions and developing needs, thus working on the new legal act they didn't start from the real situation and current organization of archival service.

Because of that, the implementation of this legal act would be impossible in present circumstances in Montenegro.

Furthermore, the following step of the Ministry of culture is hard to explain, and even worrying: in May 2005 this Draft was handed over to the experts of the MOSAIC project for evaluation, in the framework of the subsequent stages of project realization. On that occasion, the actual and only effective archival law from 1992 was not given to them for evaluation, thus they could not get a true picture of the real situation in the Montenegrin archival legislation.

On the other side, there is a strange approach of international experts who delegate complete job of the analysis and estimation of the Draft Law to a non-archival specialist. The analysis and observations are issued as the *“Memorandum on the Draft Law on Archives of Montenegro, (London, January 2005) prepared by Mr. Toby Medel<sup>30</sup> from the organization “Article 19”<sup>31</sup>. (This organization was engaged in Montenegro in 2005 to assist on the occasion of drafting the *Law on free access to information*). At the first glance of the website of this organization, one can notice that the filed of their activities is not archival profession. **So, the analysis of the Draft Archival Law about fifty pages long, was performed by an international expert for human rights (sic! not by a specialist for archival legislation). In addition, the analysis was performed for the Draft Archival Law, not for the law in force, which was not put in adoption procedure as inapplicable for the conditions Montenegrin archival service is in.** Anyhow, in the *Memorandum*, Medel’s objections are focused on the human rights and free access to information aspects, while other aspects important for the protection of archival material and for the organization and function of archival service have been completely neglected. In the end, we can conclude **that rather big job was done, certain funds from the Budget of Montenegro and from the budget of the international experts’ team project were spent for something which has essentially proved to be useless from the point of view of archival profession.***

In the meantime, the whole work of drafting the new archival law saw negative reaction of archivists from the Archives and NGO sector (in concrete terms the organization “Notar”<sup>32</sup>) who just by chance heard of this activity of the Ministry of culture. Consequently, the whole process of drafting the new archival law was stopped.

According to the guidelines of the National Report, the Ministry of culture, at the end of the year 2005, finished the analysis of the condition of unmovable monumental heritage and passed to the movable heritage in Montenegro. In the framework of these planned jobs, the minister of culture formed a Working group<sup>33</sup>. Its task was to draft, in the name of the Ministry and for the Government, report on the condition of archival activity in Montenegro<sup>34</sup>. The Ministry requested from the Working group, among other things, to make a detailed analysis of the present archival legislation, comparing it with international experiences in that field and offering the propositions

30. „Toby Mendel, Law Programme Director joined ARTICLE 19 in June 1997 and has worked extensively on media law and freedom of expression issues in Asia, Africa, Europe and the Middle East, running training seminars, advising governments and local NGOs, critiquing laws and taking cases to both national and international bodies... Prior to joining ARTICLE 19, Toby Mendel worked for some time in human rights and international development, as a Senior Human Rights Consultant with Oxfam Canada and as a Human Rights Policy Analyst at the Canadian International Development Agency (CIDA). He has an honours degree in Mathematics from McGill University, a first class LL.B (law) from Dalhousie University, and is currently undertaking a PhD in International Refugee Law at Cambridge University.“  
(See: <http://www.article19.org/about/staff.html>)

31. ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information all over the world. (<http://www.article19.org/about/index.html>).

32. The Centar for the Preservation and Presentation of Kotor Documentary Heritage – “Notar” (See: [www.cdknotar.cg.yu](http://www.cdknotar.cg.yu)).

33. The Minister of culture, in the scope of recognition of the conditions of the archival activity in Montenegro, based on the article 54, paragraph 2 of the Decree on organization and mode of work of the public administration (“Official Gazette of the Republic of Montenegro“, number 54/04), passed the Decision on forming three member Working group, in November 30th 2005. The members were” Mrs. Smiljana Radusinović, coordinator from the Ministry of culture and two members-archivists from the Department of the State Archives from Cetinje and from Kotor Historical archives (Srđan Pejović and Snežana Pejović). The planned term was 2 months.

34. According to the determined procedure, the Ministry of culture forwards the accomplished report to the Government of the Republic of Montenegro for adoption. Then, the Government should order to the Ministry and other responsible subjects, in this case it is the State archives, what has to be done in the scope of improving of the condition.

for removing the deficiencies. According to that, this report was planned to be the preparation for the adoption of the new and modern archival law. In spite of all mentioned activities of the Ministry of culture and the Government, the fact that extremely short time was determined for the preparation of such a serious report (less than two months, with small number of performers<sup>35</sup>), points out to insufficient knowledge about archival profession from the part of the highest authorities in Montenegro which should make decisions about its development. At the beginning of 2006 a very detailed and comprehensive "Report on the Conditions of archival activity in Montenegro"<sup>36</sup> was made. In the introductory part of the Report, in the first place, the key terms from archival profession and science were terminologically explained, just having in mind the situation of poor knowledge of this field in Montenegro, with the short presentation of the history of the archival profession and legislation in Montenegro. The condition of archival heritage and archival activity was presented in great many details through parameters which were the result of the work of the team fieldwork (the survey was made), and they were presented in textual and graphical form.

The evaluation was made on the basis of realized exploration and establishing of the present condition. It showed that the condition of the archival heritage in Montenegro, from the point of view of overall protection policy, was unsatisfied. The present archival law does not regulate in an appropriate way the question of complete archival heritage protection in the territory of the whole state of Montenegro. In addition, the archival service is not institutionally or functionally organized in an adequate way and it can not respond in a proper way to total actual social needs. The evaluation of the condition is expressed in details through 18 points, with one global conclusion that situation showed great conceptual and developing lagging of archival service and legislation in Montenegro behind international standards. The proposed measures offered by the Working group are that the new archival law and the other bylaws should be adopted urgently which would enable the functioning of archival profession in accordance with modern requirements. Also, it has been proposed to perform the reorganization of archival service in Montenegro in the direction of its decentralization, because this present mode of organization has shown many weaknesses. There is a special request that, in the future, during all activities in the field of archival service, the participation of archival profession should be provided and that all the activities of the authorities in the process of reforms should be performed transparently.

The Ministry of Culture as well as the Government has accepted this report of the Working group.<sup>37</sup> However, it is discouraging for us archivists, the members of the working team, that three conclusions of the Government of Montenegro demonstrate how the authorities, even after this illustration of the detailed professional analysis, does not understand essential problems of archival profession in Montenegro.

35. For the sake of comparison, for the Report on the condition of unmovable monumental heritage the term was about 8 months with more than 15 performers.

36. *Izveštaj o stanju arhivske djelatnosti u Crnoj Gori*, Podgorica 31. januar 2006, page 115 + I-XVII photo-documentation.

37. The Government of the Republic of Montenegro, no. 03-4046, Podgorica, May 18th 2006.

In the Conclusions of the Government (apart from the fact that there is a request for the Ministry of culture to continue urgently with the work on the adoption of the new archival law, and for the State Archives to reestablish recently cancelled professional titles in accordance with legal possibilities in the framework of the public administration), there is no word about the reexamination of the present organization of archival service which has proved to be extremely non-functional in the course of foreteen years. In spite of the fact that the Report has pointed out through concrete examples, to an alarming condition in archival profession just for the reason of its present organization, this key problem was again neglected and the order for the States archives turn out to be jobs which anyhow belong to the framework of ordinary duties of this institution<sup>38</sup>.

The only thing for the Montenegrin archivists now is the hope that the new archival law shall soon have its final draft, that in the process of its preparation the archivists-specialists will be included, not only the heads of the Archives (politically appointed staff) and that trough the law and bylaws the archival service in Montenegro will be organized in accordance with contemporary moment and international experiences and standards.

## Conclusion

From the example of actual problems in Montenegro, one can draw useful lessons as to what has to be done (and what not) in the field of archival activity in the conditions of great transitional changes and reforms of one society. In front of archivists of one state, which is in such great changes in the society, economy, culture, politics and in addition, usually in the overall poverty, the problem of high-quality organization of archival service and performance of archival activities appears to be an enormous hill which is difficult to climb.

Usually, in the first place there is the problem of not updating of archival legislation in accordance with new and great social and technological changes, thus the possibilities for professional activity of archivists are restricted at the very beginning. It is known that transition, with other additional and accompanying problems such as Montenegro has had, makes chaotic situation in which the attention is concentrated on surviving, while all other activities are pushed in the background. This is the case with the protection of cultural heritage, which is usually most endangered in such circumstances.

Although high-quality organized archival service is the prerequisite of good functioning of the public administration, e.g. the state (unfortunately it is usually on the most responsible authorities to adopt democratic principles in the functioning of the state) there is not enough developed awareness about it. Because of that, the archi-

38. «The State archives is charged that until the end of the third quarter in the framework of current legal authorization, it carries out the control over the work of possessors of archival material regarding performing of notification, data, saving and arrangement of current records, selection of archival material and respectability for long last saving in archives and that submits about it the appropriated report to the Government.» (idem, The Government of the Republic of Montenegro...).

val profession is usually inadmissibly marginalized.

Additional problems are the requirements and pressure which the international community sets before the authorities of these countries as the condition for joining the European Union. This, as is the case with Montenegro, presents a very complex task which has to be done in a short time, without the possibility for deeper analysis and without well thought out strategy for future application and elaboration. In addition, another problem is the lack of high-quality trained professional staff for the realization of all new tasks. For that reason in the Ministry of culture of Montenegro numerous strategies for future development of different cultural segments are drafted and they stay “dead letters” or are realized very slowly.

All the said international requirements start, in the first place, from the harmonization of legal regulations that encompass the field of archival profession too. In that hasty realization of these conditions, beside the said other problems, the question is raised how real conditions can be recognized, like personnel, technical, technological and financial opportunities for the application of high international standards and what real quality and possibilities will exist for the application of legal and other decisions adopted in such way. In addition, the assistance of international experts is very often discussible.

From the experience of Montenegro, it would be desirable for the countries which pass through similar development and reform processes in the field of archival profession, that at the international archival level there is more organized and permanent care of archival cultural heritage wherever it is located, which would be realized through very concrete modes of assistance to these countries (expert and advisory, personnel, technical, technological and financial ones).

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