

Private Papers and Archives in Israel: Professional and Legal Aspects

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The State of Israel's Archives Law from 1955 is out of date and has long required radical changes. The law refers in four of its clauses to the State Archivist's authority, responsibilities and functions with regard to archives and private collections from two aspects:

a) *The State Archivist's obligation to register archives and private collections.*
b) *The State Archivist's supervision of non-removal from the country of private archival material without ensuring that a copy of the said material will remain in Israel.*

The article deals with the legal and professional aspects on this subject of the Archives Law, and their implementation by the State Archivist. It describes three instances that caused widespread public protest and even public criticism of the State Archivist, which illustrate these aspects.

The status of private records in Israel's Archives Law

The State of Israel's Archives Law was legislated in 1955, six years after the establishment of the State Archives¹. Before this there had not been any legislation to regulate the system of managing records and archives in the country, nor to determine the legal status of private archives and personal records of historical value, kept by private people.

The Education and Culture Committee of the Knesset, (Israel's Parliament), that discussed the formulation of the law for three years, dealt extensively with the clauses pertaining to the rights of private people and bodies holding valuable archival material, and with the restrictions limiting the ability of the State Archivist to act with regard to such records².

Today the Archives Law contains four clauses in which are detailed the function of the State Archivist, and his authority to act in regard to archival material of historical value, that is held by private people.

Primarily, the law defines what are private records that require permanent preservation. The definition lays down five criteria for examining the historical importance of such material, if it is of value to the research of: **the Past, the People, the State and the Society, or if it is connected to national, important or well known personalities.**

What is the significance of these values?

The Past – all material of general universal historical value.

The People – The Jewish people in Israel and in the diaspora.

The State – the State of Israel.

The Society – Israeli society comprising all its sectors and ethnic communities – Jews, Arabs, Moslems, Christians, etc.

Personalities from all walks of life and society – politics, economics, culture, art, religion, etc.

1. See original text of Law in the State of Israel's "Book of Laws", Ministry of Justice, Jerusalem, 1955.

2. Arkhiyon, *Reader in Archives Studies and Documentation 1, The Israel Archives Law its History and Implementation*, P.A. Alsberg Editor, Israel Archives Association, Jerusalem 1987.

The State Archivist's authority and obligations with regard to private records

The Archives Law requires the State Archivist to record all private archives of historical value existing in Israel, so that the State Archives will hold comprehensive information regarding these collections and encourage people to deposit them in archives that provide services to the public.

However, the Archives Law grants only limited authority to the State Archivist regarding the gathering of detailed information on the content of such archives. The State Archivist is not entitled to examine directly privately owned records, nor to copy them, without the agreement of the owner. The State Archivist is only entitled to receive information that the owner is prepared to provide but he cannot compel the owner to hand over additional information. The State Archivist must therefore be satisfied with information provided by the owner or other sources³.

Removal of private material from Israel

The State Archivist has the authority to prevent, according to his judgement, the removal from Israel of privately owned records that are of historical value, if the owner does not agree to permit the State Archivist to examine the material and to copy it. If the owner agrees to the condition that the material will be copied, the copies will be kept permanently in the State Archives. The date for opening such material to the public should be agreed on jointly by the State Archivist and the owner of the material. However, if the State Archivist forgoes the right to examine the material or copy it, the owner will be permitted to remove it from the country. According to the Archives Law it is a criminal offence to remove archival material from the country without the permission of the State Archivist.

There have been several attempts in the past to remove private material of historical or research value from Israel, both by legal and illegal means. The most famous case, which was reported on in the press, and aroused wide media interest at the time, was the attempt to remove illegally from Israel, unpublished writings by Franz Kafka.

Franz Kafka had ordered the executor of his will, the writer Max Brod, to destroy all his unpublished manuscripts, after his death. Following much deliberation, Max Brod decided not to honour his friend's wish and kept Kafka's archive in its entirety.

After Max Brod's death in 1976, his spouse decided to sell some of Kafka's manuscripts to any library or collector in Israel or abroad. This was brought to the attention of the State Archivist who informed her that she may not remove the material from Israel without his permission. However, Max Brod's spouse ignored the State Archivist's request and attempted to smuggle some of the manuscripts to Germany. As the State Archivist had informed the cu-

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La Legge sugli Archivi dello stato di Israele, del 1955, è ormai obsoleta, e da lungo tempo richiede cambiamenti radicali. La legge, in quattro dei suoi articoli, tratta dell'autorità, delle responsabilità e delle funzioni dell'Archivista di Stato, ed in particolare fa riferimento a due aspetti riguardanti archivi e collezioni private:

- a) *obbligo dell'Archivista di Stato di registrare archivi e collezioni private;*
- b) *supervisione dell'Archivista di Stato alla non possibilità di uscita dal territorio nazionale di materiali provenienti da archivi privati senza che copia degli stessi rimanga in Israele.*

Il presente articolo tratta degli aspetti legali e professionali riguardanti la Legge sugli Archivi, ed il suo aggiornamento da parte dell'Archivista di Stato. Descrive inoltre tre casi che hanno causato una vasta protesta dell'opinione pubblica e critiche all'operato dell'Archivista di Stato, casi che illustrano questi aspetti

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Arhivska zakonodaja, ki v Izraelu datira v leto 1955, je potrebna sprememb in mora biti nova, saj se predsejem nanaša na avtoriteto arhivista, na njegovo odgovornost in funkcije, ki so drugačne v arhivih in drugačne pri zasebnih zbirkah in to zaradi:

- a. *ker ima arhivist, ki je zaposlen v državni upravi obvezo, da zakonsko ščiti oboje, tako arhivske dokumente kot zasebne zbirke,*
- b. *nadzorovanje arhivistov v državnih službah dokumentacije, ki se ne smejo odstraniti iz arhivov in ne smejo zapustiti države, četudi se naredijo kopije.*

Tako člani zakonodaje obravnavajo zakonodajne in strokovne vidike zgolj na podlagi arhivskega zakona in na ocenah arhivista iz državne ustanove. V članku so zato opisani trije vidiki sprememb, ki so nastale tudi zaradi javnega protesta in kritike delovanja in ravnanja državnih arhivistov.

3. Arkhiyon, *Reader in Archives Studies and Documentation 1*, Legal constraints regarding privately owned and non-public records, Dalia Moran.

stoms authorities in advance of such a possibility, she was searched, the documents were found in her hand luggage and confiscated. Permission to remove the material from Israel was not granted until an agreement was signed with the State Archivist, according to which copies of the material would be deposited in the State Archives. According to the agreement the State Archivist would be permitted to open the material to the public after 30 years. One year later, the owner of the material applied to the State Archives requesting permission to remove some additional manuscripts. The material was copied at the State Archives and she then received permission to take the originals out of the country. Now, thirty years since then, the material is open to the public⁴.

Another, entirely different case, which is an entire saga, concerns the film archives belonging to the late Nathan Axelrod, Israel's pioneer of cinema. Axelrod made films about the Jewish settlement of Mandatory Palestine and about the State of Israel, for a period of over fifty years, from the beginning of the 1920s. His film collection consists of one million feet of film, hundreds of newsreels, documentary films and feature films. Nathan Axelrod's film collection is the most important collection existing in Israel. Many documentaries, television series' and other cinema works have used and still use his material⁵.

When Axelrod ceased to make films in the early 1980's he attempted to sell his film collection to archives and television stations in Israel and around the world. The State Archives wanted to purchase his archive and the rights of use, but was unable to raise the \$200,000 he was asking. Moreover, the sale was made conditional to a commitment on the part of the buyer that he would copy the entire collection which was mostly on nitrate, to dupe negative and dupe positive films, which would require an additional million dollars⁶.

A number of TV channels around the world expressed interest in purchasing the archive. The highest bid came, surprisingly, from Japanese television, which offered no less than a half million dollars⁷.

The State Archivist informed Nathan Axelrod that he would not grant permission for the archive to be taken out of Israel, if Axelrod would not permit a copy to be made, that would remain in the country. Axelrod agreed, since this was what he wanted – to ensure that a copy of the collection would remain in Israel. But since the State Archives could not raise the necessary funds to make the safety copies, there was no choice but to allow the collection to leave the country after a small part of the archives had been copied on to video. The State Archivist finally succeeded in obtaining half the required amount (\$100,000) needed to buy the films. Two years later the remaining sum was found to buy the rights from Axelrod. However, the State Archives could not raise the one million dollars for copying the archive onto dupe negative and dupe positive copies as stipulated in the contract, and so was obliged to return the collection. The drama came to a happy end when, only very shortly before the contract was due to expire, a donor was found, who was willing to provide the one million dollars, in order to make safety copies of the entire archive. Finally, the whole archive was copied, according to the agreement, on dupe positive and dupe negative, which are

4. See relevant material regarding this matter in State Archives file ISA 9507/34/G.

5. ISA 280/34/G.

6. ISA 7320/40/G; ISA 7320/41/G.

7. Interview with Nathan Axelrod July 1987.

kept in Israel⁸.

The third example, which caused a great public uproar over the removal of private collections from Israel, concerns the archive of one of Israel's greatest poets, Yehuda Amichai, a Nobel prize candidate. About one year before his death, Amichai was approached by Yale University, who wanted to purchase his private archive. Amichai's lawyer, who was aware of the Archives Law in regard to the removal from Israel of historically valuable collections, requested permission to do so from the State Archivist. The Director of the State Archives met with the poet Amichai and his lawyer and proposed that the State Archives would copy the material, so that he could receive permission to remove legally from Israel. The proposed agreement included a restriction on opening the material to the public only after 30 years⁹.

Yehuda Amichai did not concede. He applied to the State Archivist, who is the highest legal authority with regard to the Archives Law. The State Archivist, whose approach differed from that of the Director of the Archives, decided to forgo the right to copy the material for keeping in the State Archives. One year later, after Yehuda Amichai's death, it became publicly known that his archive had been sold to the Yale University library. A huge uproar arose in Israel, as Yehuda Amichai was considered to be a national poet. The sale of his archive to a university abroad was thought to be a great loss. Today, seven years on, the affair is still brought up in the media and academia as a negative example of the abandonment of an important national collection and its sale abroad, that should never be repeated¹⁰.

The Yehuda Amichai affair and many other cases in which private collections are removed from the country, raise two cardinal questions. Firstly, is the existing Archives Law correct, moral and just? Is it justified to protect public rights by preventing the removal of valuable collections, even if it affects the right of the private individuals to sell their possessions. The second question is, did the State Archivist act correctly in the case of Yehuda Amichai. Was it the right thing to do, to forgo the authority granted him by law to prevent the removal of the archive from Israel, which prevent the public in Israel from using the material? Or did he act correctly by allowing the creator to enjoy the fruits of his creation? In other words, which is preferable – the national interest or the private one?

There is, of course, a third possibility, which is the one suggested to the Amichai family by the Director of the State Archives, prior to the sale. This was to try and raise the sum requested in Israel or abroad in order to buy the archive and deposit it in an archive in Israel, and thus it would remain in the country. However, the Amichai family, who were afraid that the negative publicity, caused by their intention to take the material out of the country would embarrass the poet, who would appear to be asking for donations from institutions and private people.

The Israel State Archives is presently preparing a new Archives Law to replace the old one from 1955. There is no doubt that the dilemmas presented here with regard to the state Archivist's authority over protecting the rights of the owners of valuable private mate-

8. ISA 9507/34/G

9. ISA 12600/14/G.

10. See articles in Ha'aretz daily newspaper from September 2000 onwards.

rial who want to remove it from the country, as against the protection of the so called “public interest”, by preventing its removal, will greatly occupy the legislators. However, this era of modern technology allows for the implementation of many methods of duplication and facilitates an easy approach to all archival material. The issue of where the material is actually located, in Israel or abroad, becomes much less significant.

