

Snežana PEJOVIĆ

* Archivist at State Archives-Kotor Historical Archives, Stari grad 318, 85 330 Kotor, SCG
Tel. +382 82 325-178, E-mail: notar@cg.yu
President of the Centre for the Preservation and Presentation of Kotor Documentary Heritage «Notar», pf. 83, Stari grad 477, 85 330 Kotor, SCG
Tel/Fax + 382 82 304 817; 304 816; + 382 69 056 342; E-mail: pejsib@cg.yu; http://www.cdknotar.cg.yu

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

- *Introduction: private archives - part of national archival heritage; increased interest in private archives during the last several years; comparison: private archives in the period of socialism and public property and in the newly created situation of transition of the society and the economy;*
- *Private owners and creators of archival materials in the present legislation in Montenegro (review of legislation of archival and other laws and of some of their articles that regulate this subject);*
- *Analysis of the condition: real needs and practice regarding supervision, protection and access to private archives (problems in performing adequate supervision and protection of private archives because of the frequent changes of the state and legal status of the country, as well as the changes of authorities, rapid ownership transformation, liquidation and bankruptcy proceedings of enterprises and institutions, lack of legal acts regulating records management and its practical implementation, a huge increase of private creators and owners of archives, etc.) Educational level of staff responsible for the management of records of private creators and owners. On the private fonds and collections which are in possession of the State Archives in Montenegro. On the awareness of the significance of archives and of the concern for it with private creators and owners as well as with archivists – on the widespread and usual practice of the care for documentation exclusively during its operative life cycle, etc.;*
- *On appraisal and categorization of creators and owners of private archives, records about them in the Archives (about the need to keep national registry of creators and owners; about common archival practice that competent archives can only control the private archives which perform some public function or which are supported by state funds), problems with the acquisition of private archives, possibilities of competent archives to carry out high quality*

Private Archives in Transition Conditions: Problem of Control, Protection and Accessibility of Private Archives in Montenegro

Introduction. On experiences and tradition in protection of private archives in Montenegro

Not long after I had started working in Kotor Historical Archives (Montenegro) I was entrusted with the activity dealing with the archival material belonging to private owners. I have to say that in those days in my country (Socialist Federative Republic of Yugoslavia - SFRY) there was a communist social order with the specific form of ownership, so called **public ownership**. Although this was supposed to mark the form of ownership which is called today state ownership, we were all convinced that we were the owners of everything, which, theoretically, in the minds of our citizens completely pushed in the background the existence of private ownership. What is more, the notion of private ownership had always brought the association of some relapse of what was «bad and past» in the capitalist era and almost always had had negative connotation. Thus, taking care of the owners of archival material who privately own documents, was quite a „hazy“ archival task at that time, which carried certain doze of mysticism and smell of past and forbidden times. And there was always the hope that in private correspondence, some diary entry or elsewhere, some information would be found which cast the light from a different angle onto the state and society we were in and which we were hoping to change. A real challenge for a young archivist!

And what it looked like in practice?

My task was to determine or independently estimate who were those persons (by the Law «natural persons») that possessed archival material of general cultural and scientific interest, naturally in those days solely the material privately owned by natural persons, to set up the register of these in the Archives (so called, file with register sheet), to establish possible contact explaining to them the significance of their material and the need of the wider community for that material to be adequately taken care of, put in order and recorded and preserved permanently, in order for it to serve scientific and other general purposes. And naturally, in case of the owner's acceptance, by means of the official takeover procedure to transfer his/her material to the Archives or to make the copies of the material and store them in the Archives under the name of the owner instead of the originals. In

order to perform this task my strongpoint was primarily and exclusively on personal ability to gain the trust of the owner of the archival material and to win him/her over for cooperation with the Archives. **This means that such a relation was completely relying upon voluntary base**¹. The invoking of valid legislation in such a way that general provisions of the Law relating to all the owners in general are to be used would be only counterproductive.

In former professional Yugoslav literature the activity on the protection of private archives was treated as a more complex archivist activity just because of the fact that in the absence of precise legal archival provisions on private ownership, it was more in the domain of improvisation, archivist's resourcefulness, his/her ability to achieve high quality communication with an owner, with fair knowledge of diverse historical, sociological and other circumstances, even the owner's psychology.

As for Montenegro, one should know that the organized archival service initiated in 1949 with the establishment of the first official archival institution in Montenegro. Since then, the activity has been carried out according to such an established concept of the protection of archival material in private ownership, which means that such an approach has been present in the practice for about 50 years now².

Regardless of the fact that formerly the number of private creators and owners had been smaller than nowadays, the stated relation towards this archival material already at the beginning could not satisfy its qualitative and complete protection. Generation after generation of archivists have created the awareness that the protection of private archives is some kind of optional activity. One need not speak about the opportunities for archivists in such circumstances to work more seriously on the raising of awareness among private owners; such their activities were sporadic and relatively rare.

This means that the care for private archives, ever since the beginning of archival service in Montenegro, has not been carried out systematically nor has there been adequate legal norms for the same. In such a long period of time of the activity of this kind many significant collections have been destroyed or stolen or otherwise alienated. How much work was done, or rather, how much work could have been done with regards to the protection of private archives is best illustrated by the words of the doyen of Montenegrin archival service, Miloš Milošević, PhD. Writing about the problem of the protection of private archives in Montenegro and Yugoslavia, back in the sixties of the twentieth century, he pointed out how endangered was the archival material in private ownership which had almost completely been outside the system of organized protection. With regards to the illogical character of legal provisions³, amongst other things, he said the following: "The recording manner prescribed for private archives by the general law had obviously been already doomed to failure... since private owner of archival material will in most cases have no sufficient knowledge, nor willingness and time to make a serious list which would have some practical or scientific value", concluding that this obligation of his/hers, which he/she should have towards archival institution, is by its nature a "platonic" one⁴.

supervision, especially concerning the alienation or destruction of private archives;

- On private archives of natural persons (how to discover potential owners, how to establish contacts with them, raise his/her awareness about his/her holdings, how to obtain his/her trust towards archives, etc. – experiences in Montenegro). Opportunity of Montenegro to purchase archives from the owners or to participate in auctions.

- Access to private archives in the light of newly adopted Law on the free access to information in Montenegro.

PEJOVIĆ, Snežana, Gli archivi privati nella fase di transizione: problemi di supervisione, protezione ed accessibilità negli archivi privati del Montenegro. Atlanti, Vol. 17, N. 1-2, Trieste 2007, pp. 277-285.

- Introduzione: gli archivi privati – parte del patrimonio nazionale archivistico; accresciuto interesse negli archivi privati durante gli ultimi anni; comparazione: gli archivi privati nell'epoca socialista e di proprietà pubblica e nella nuova situazione creatasi durante la fase di transizione sociale ed economica.

- Possessori privati e produttori di materiale archivistico nella vigente legislazione del Montenegro (rassegna della legislazione sugli archivi ed altre leggi e di alcuni articoli che regolamentano tale materia)

- Analisi delle condizioni: bisogni reali e pratica riguardante la supervisione, la protezione e l'acces-

1. It was in Kotor archives that most attention in Montenegro was being paid to the protection of private archival material. This is understandable when one has in mind that numerous significant documents had been preserved with well known and wealthy families in Boka Kotorska Bay region, who, apart from being concerned with proving the ownership over their ownership by means of documents, had traditionally established relations towards the antiques and cultural heritage, which had relied upon solid economic status of this region. Gathering of private archival material from natural persons, its transfer to the Archives or recording in the filed were the activities performed in Kotor archives on various occasions. The greatest number of private record groups and collections from the territory of Boka Kotorska Bay entered the Historical Archives in the first years following the establishment by means of purchase or gift, some of it was being transferred to the Archives as a deposit. In the procedure of drafting the "Guide though archival material" (1977), the summary inventory was being done in the filed of the archival material of churches. Following the disastrous earthquake in 1979, certain number of private documents was being taken over from destroyed houses and deserted apartments. The owners were subsequently informed and they mostly accepted for their archival material to remain permanently stored in the Archives. One of the bigger actions in the protection of private archives was the exhibition "Protection of private archives" in 1993, held in Kotor Archives (organized by Snežana Pejović), on which occasion the documents were exhibited from family and personal archival record groups and collections stored in the said archives, but also from some significant private collections outside the Archives. The motif for

sibilità agli archivi privati (problemi nell'effettuare adeguata supervisione e protezione degli archivi privati causa i frequenti cambi di status legale del paese, così come delle istituzioni, rapida trasformazione dei possessori, messa in liquidazione e stato di bancarotta di società ed istituzioni, mancanza di atti legali che regolino la tenuta degli archivi e sue pratiche ricadute, accresciuto interesse di privati possessori e produttori di archivi, ecc.). Livello formativo del personale responsabile della gestione di documenti provenienti da archivi privati. Dei fondi privati e delle collezioni in possesso dell'Archivio di Stato del Montenegro. Sulla consapevolezza del significato degli archivi e sulla preoccupazione al riguardo sia da parte dei possessori e produttori privati sia da parte degli archivisti – della diffusa ed usuale pratica di cura della documentazione solitamente nella propria fase corrente, ecc.

Della valutazione e categorizzazione di produttori e possessori di archivi privati (necessità della tenuta di un registro nazionale di produttori e possessori; della comune pratica archivistica che vuole che gli archivi competenti possano solamente controllare quegli archivi privati che siano investiti di una funzione pubblica o siano finanziati da fondi statali), problemi con l'acquisizione di archivi privati, possibilità dei competenti archivi di effettuare una supervisione altamente qualificata, specialmente per ciò che concerne l'alienazione o la distruzione di archivi privati.

- Degli archivi private di persone fisiche (come scoprire potenziali possessori, come stabilire un contatto con essi, come accrescere la loro attenzione ri-

the organization of this exhibition was that in the period of disintegration of Yugoslavia, the war in the region and social transition, the attention be drawn to the significance of private archives. (see: S. Pejović: *Zaštita privatnih arhiva u teoriji i praksi* (Protection of private archives in theory and practice) «Arhivski zapisi», Cetinje, 1996, n. 1-2, pp. 85-93).

2. The exception is a brief period after 1945 when the "Decision on the protection and storing of cultural heritage and antiques" was passed (20th February 1945) valid for the entire Federative People's Republic of Yugoslavia (FPRY). In the second paragraph of article 1 there are measures for the protection of objects of cultural-historical importance owned by private individuals. The legal act "Order on temporary insurance of archives" ("Official gazette of the FPRY", 25/1948), does not mention private archives as a separate category, and all state archives, even in regional, local and municipal people's committees big activity started of recording all existing archives, private ones included. The data were sent to state archives and institutes for the protection of cultural heritage. Article 3 specifies the archives that are considered private, and these were mostly those from the pre-war period (archives of various associations: educational, scientific, cultural, music and other artistic ones, then, of cooperatives, the associations of traders, craftsmen and other class associations, banks, enterprises, factories, landed estates and various prominent personalities; this list excluded church archives). (see: Miloš Milošević, *Za efikasniji nadzor nad privatnim arhivima* (For more efficient monitoring of private archives), «Arhivisti», 7(1957), vol. 3-4, p. 17.

3. *General law on archives* "Official gazette of the FPRY", 23rd January 1950.

4. Miloš Milošević, *Za efikasniji nadzor...*, pp. 17-24.

From this atmosphere of almost half century of insufficient knowledge of the private form of ownership in general, even certain shame of the same, in the nineties Montenegro jumped into the process of social and economic transition. It was to be expected from archivists, from that cognitively and legally insufficient fifty years long practice in the protection of only one, very narrow form of private ownership over archival material, to come to grips with enormously growing number of private archives and all problems brought by new social changes: the opening of archives and free access to information, new position of archives as important information points, growing awareness on the significance of this cultural heritage in the building of national and cultural identity, especially in the processes of the disintegration of states and the creation of new ones, then, continuous change of ownership over archival material, new technologies and exporting of archival material to the Internet, the problem of the protection of personal data and many other things.

Private owners and creators of archival material in the existing legislation in Montenegro

In Montenegro there is an ongoing procedure of drafting new archival law which should come into effect by the end of this year. Until then, the **Law on archival activity** from 1992⁵ will have remained effective, i.e. the law adopted at the very beginning of transitional changes in Montenegrin society. In this law, despite the fact that in Montenegro at that time there had already come to various forms of ownership transfer from the so called public to private ownership, indeed primarily with commercial subjects, private ownership over archival material was not particularly regulated. It is obvious that the legislator was not thinking of what happens with archival material in the process of ownership transfer, or of the dangers which might lead to irreparable destruction of important documents.

Although former social circumstances required completely different treatment of ownership over archival material, the archival law from 1992 only copied some articles from the old law from 1978⁶ and avoided some terms characteristic for former state order, like for example **public ownership**. Since the Law from 1992 brought about the centralization of archival service in Montenegro, all provisions of the older archival law with regards to conditions and possibilities for the establishment of archives were eliminated. This left the open space for certain number of creators and owners of archival material, including those private ones, to stay completely outside the system of protection from the level of archival service in Montenegro. And the number of private archives was getting bigger and bigger from one day to another. This legal insufficiency included very precious record groups and collections in church ownership. Nowadays, these are only conditionally called archives, and in fact they are only a part of ecclesiastic organization and act outside the control of archival practice and official archival institution.

The Law from 1978 regulated quite an important segment in the protection of public archival material which under various circu-

mstances got into the possession of natural persons and read: «Archival material which is in public ownership, and which is located with natural persons, shall be handed over to competent archives»⁷. In the Law from 1992, the legislator totally neglected this provision. And it is exactly the recent period of big social changes in Montenegro, with the transfer from one-party to multi-party and parliamentary system, frequent parliamentary elections, both on national and local level, elections and changes of governments, regrouping of political forces, changes of state borders and state status, which has seen the uncontrolled alienation of public material which has been being transferred into the private hands of numerous political actors. Usually in the moments of the showdown between political opponents one could find out that public material found its place in someone's private property. The State Archives, of course, never reacted, to a great extent because there were no adequate standpoints in archival law.

In the Law from 1992, in General Provisions, article 8, where holders are defined of archival material, the private owners of archival material are still referred to as "natural persons". Next to an authority, organization, institution, enterprise, there is only the notion that it is also «civil-legal entity and **natural person** which as a legal successor or on any legal ground received archival material or it found its place in its ownership». There is no mention of state ownership, private legal and natural persons and of the classification of material to private and public.

Article 25 of the same law, under the duties of archives, regulates quite clumsily the acquisition policy of the State Archives, again only in relation with «natural persons» that possess valuable archival material: «The Archives collects and is obliged to take over the archival material created during the work of cultural, scientific, public and other persons whose work is of importance for the Republic and municipalities respectively, if such material is offered as a gift, a legacy or deposit. /Public legal person and natural person have the right to sell archival material that is in private ownership.»

This would be mainly all concerning private archives in actual Montenegrin archival law.

Practical experiences have shown all the inefficiency of such a legal norm. It could only lead to the situation of hiding or even destroying the information by the creators and owners of private archival material, and its general decay.

Practice in the protection of private archives in Montenegro during and after transitional changes

At the end of 2006, the Ministry of culture and media of the Republic of Montenegro formed a Task force for making the analysis of the condition of archival activity in Montenegro⁸. The survey necessary for the making of this analysis was conducted in all departments of the centralized State Archives showing discouraging data with regards to the protection of private archives.

guardo i loro fondi, come ottenere la loro fiducia verso gli archivi, ecc. – esperienze in Montenegro). Opportunità del Montenegro di acquisire archivi da possessori privati o di partecipare alle aste. - Accesso agli archivi privati alla luce della legge di recente adozione sul libero accesso all'informazione in Montenegro.

SUMMARY

Since 1949, when the organized archival service initiated in Montenegro, a specific concept of the protection of archival material in private ownership was established which referred solely to the material privately owned by natural persons. In that time in former Yugoslavia there was a communist social order with the specific form of ownership, so called public ownership and the existence of private ownership was pushed to the background. In the absence of precise legal provisions on private ownership, the job of archivists was more in the domain of improvisation, their resource-fulness and ability to achieve high quality communication with an owner, with fair knowledge of diverse historical, sociological and other circumstances, even the owner's psychology. From this atmosphere of almost half century of insufficient knowledge of the private form of ownership in general, even certain shame of the same, in the nineties Montenegro jumped into the process of social and economic transition. It was to be expected from archivists, from that cognitively and legally insufficient fifty years long practice in the protection of only one, very narrow form of private ownership over archival material, to come to grips with enormously growing number of private archives and all problems brought by new social changes.

In Montenegro there is an ongoing procedure of drafting new archival law which should come into effect by the end of this year. Until then, the Law on archival activity from 1992 will have remained effective. In this law, despite the fact that in Montenegro at that time there had already come to various forms of ownership transfer from the so called public to private ownership, private ownership over archival material was not particularly regulated. This left the open space for certain number of private creators and owners of archival material to stay completely outside the system of protection from the level of archival service in Montenegro in spite of the

5. «Official gazette of the Republic of Montenegro», 25/1992; *Law on amendments of the Law on archival activity*, «Official gazette of the Republic of Montenegro», 27/1994.

6. «Official gazette of the Republic of Montenegro», 11/1978.

7. *Ibid*, article 41, paragraph 2.

8. *Izveštaj o arhivskoj djelatnosti u Crnoj Gori (Report on archival activity in Montenegro)*, Snežana Pejović, Srđan Pejović, Smiljana Radusinović, «Stanje kulturne baštine Crne Gore», Podgorica, 2006, p. 181-250; Snežana Pejović, *Archival Legislation and New Social and Technological Changes (Montenegrin Experiences)*, «Atlanti», Trieste, 2006, pp. 43-58.

fact that the number of private archives was getting bigger and bigger from one day to another. Practical experiences show all the inefficiency of such a legal norm.

At the end of 2006, the Ministry of culture and media of the Republic of Montenegro formed a Task force for making the analysis of the condition of archival activity in Montenegro. The survey necessary for the making of this analysis was conducted in all departments of the centralized State Archives showing discouraging data with regards to the protection of private archives. In the first place, the archivists pointed out to the problem of the lack of legislation in order for them to be able to carry out the protection of archival material in private ownership. They particularly expressed their total weakness in controlling the archival material which changes its ownership status and the owner and which is most endangered. What is more, it was established that in the entire records monitoring service the control is carried out in the same way as before 1990 and transitional changes. The Report concluded that archival service in Montenegro, as well as archival legislation, have not experienced real change from the one-party system towards pluralism, since the focus still remains on public archival material. There was an urgent need to define public and private ownership and to determine priorities among records offices with the procedure of valorisation and categorization, because Montenegrin archivists are currently faced with a huge number of creators and owners of archival material and confused as to how to determine priorities in the control and protection.

Apart from that, there is no the voluntary acceptance or request of a records office for a competent archives to perform supervision and monitoring over the material which is now privately owned. It can be concluded in general terms that with creators and owners in Montenegro there is no formed awareness about such a need, or about the need to look for an expert advice from Archives.

With all the problems of social transition and it extremely negative reflection onto the high quality protection of archival material in Montenegro, additional difficulty was the fact that in the meantime a whole set of laws was adopted touching upon archival activity as well, but in the procedure of their passing and further application the State Ar-

In the first place, the archivists pointed out to the problem of the lack of legislation in order for them to be able to carry out the protection of archival material in private ownership. They particularly expressed their total weakness in controlling the archival material which changes its ownership status and the owner and which is most endangered. It was established that in the entire records monitoring service the control is carried out in the same way as before 1990 and transitional changes. The records kept of records offices are solely related to state organizations and institutions, mostly the same ones as in the past period of one-party social order. What is more, since at the level of the State Archives no standardized documentation is kept on records offices monitored by the same, in registers their number is considerably smaller than the actual number records offices in Montenegro. It is even smaller than the number of those which the Archives should take care of on the basis of incomplete provisions of the Law from 1992.

The archivists in Montenegro are currently facing a big problem of monitoring all ownership, organizational and other changes in the records offices. Everything goes on fast and frequently, and it is mostly very hard to come to updated data. Additional problem for them is the existing centralized organization of archival service, because of which there is constant overlapping of competencies at the national and local level when the creators and owners of archival material are in question.

The Report concluded that archival service in Montenegro, as well as archival legislation, have not experienced real change from the one-party system towards pluralism, since the focus still remains on public archival material. It is clear that there was an urgent need to define public and private ownership.

Apart from that, no priorities have been set among records offices with the procedure of valorisation and categorization, so that Montenegrin archivists are currently faced with a huge number of creators and owners of archival material and confused as to how to determine priorities in the control and protection, since even a layman is aware that it is not possible to monitor all. Apart from the archives of prominent families or individuals, church archives and private commercial subjects, in transitional restructurings in the category of private archives entered various societies and associations (registered as NGO sector), then trade unions, numerous law offices and offices of other persons which offer various services, private firms of various subjects, foreign agencies and do on.

In constant processes of the transfer of ownership from the state to private ownership, liquidation of enterprises and institutions etc, a great deal of archival material gets left to negligence both from the existing and the new owner. Thus, it has happened in the past years, which practically became a habit, that archives save such documentation by taking it over usually in disorder and without previous sorting out of worthless records. This has led to the piling up of archival storage rooms with records and archival material which are still operative.

The Report also establishes that the existing archival law defines the right to the preferential buying right of archival material.

However, the acquisition policy of this kind in Montenegro is carried out totally arbitrarily, and we can even say outside legally established sphere. In the existing difficult economic situation in Montenegro, during the past fifteen years or so, the destiny of perhaps very important private archives has been seriously endangered with regards to alienation due to the very need of the owners to sell valuable documents and other objects and thus acquire certain financial means. It is completely certain that this form of trading has been going on in an elemental way and without the knowledge of the Archives or some other competent institutions for cultural heritage.

In Montenegro, at the level of the State Archives, despite big social changes, until recently the issue of the protection of private archives with new creators and owners of archival material, or with those "old", once public, i.e. state owned or mixed ones, which suffered considerable ownership and other transformations, has hardly ever been an item of the agenda. Throughout the period of transitional changes there has been no education or training of archivists who take care of records offices and of archival material outside archives. They are mostly ignorant of international standards and regulations in the field of the protection of private archival material. Let alone some instructions or regulations which could have been passed at the level of Montenegrin archival service and which would have compensated for the shortcomings of already considerably outdated archival law from 1999. In such a disorientation of archival service and professional archival staff, it is hard to expect better condition in records offices. It can be noticed that records offices have insufficient knowledge and do not apply office and archival operations. The greatest number of these are completely ignorant of the activity of archives, and they do not know that even in accordance with this outdated Law they are obliged to hand over to the Archives the data on the material they create and possess. Additionally, private subjects are often faced with the lack of adequate space for the storing of records and archival material. Many of them often change locations they work at. Working spaces are usually very cramped, insufficient to accommodate persons working there, let alone for the storing and preserving some bigger quantity of documentation. The financial means that private creators and owners of archival material would possibly single out for the preservation of the same are so far in the domain of abstraction. With all this, one should not forget that very quickly and constantly new firms, enterprises, associations are created or wound up. Small quantities of archival material are created there usually misplaced or destroyed by the owner. In the conditions when at the level of the restored Montenegrin state legislation is passed for all restructurings to be introduced in legal spheres, many data are under the veil of privacy or business secret thus inaccessible to public and also to professionals like archivists.

As for the voluntary acceptance or request of a records office for a competent archives to perform supervision and monitoring over the material which is now privately owned, it can be concluded in general terms that with creators and owners in Montenegro there is no formed awareness about such a need, or about the need to look for an expert advice from Archives⁹. They have only the awareness about the need for storing archival material whilst it is indispensable for them in the operative sense. This is favoured by the data that

archives was not consulted or included. These are in many segments in collision with the existing Law on archival activity.

Recently, a Task force was formed at the Ministry of culture, media and sport of Montenegro for the drafting of new archival law. It is expected from the task force to draft a main new archival legal act which would be in line with archival laws of the countries that are already EU members or on the road to accession. It is certain that the new and modern Law on archival activity is indispensable. Although it will be passed in Montenegro more as a result of the compilation of experiences and legal regulations of developed European countries and those which have long passed through the process of transition, and it will be less based on the own experience, legislative tradition and found condition, but it is sure that this time the issue of the care for private archives may not be avoided or marginalized.

9. Recently in Kotor archival department we have had an extremely positive example when the Mayor of Tivat municipality invited the Archives to participate at a meeting when the agreement was supposed to be reached on the destiny of the archival material of one hundred years old enterprise - Tivat Naval Repair Institute which is about to be transferred to private hands of a Canadian citizen. It was emphasized in the letter that there was the awareness that this was documentary heritage which belonged to Montenegro and which needed to be professionally protected.

recently the archivist in Kotor Archival department entrusted with records offices, in the preparation of a lecture, toured records offices and enquired about the electronic material they created. In all records offices the answer was that they did not create or possess such material, except some small quantity of accounting documentation!

At the beginning of this year the State Archives organized a small scale, internal conference related to current problems related to the work with records offices in new social and technological conditions¹⁰. On that occasion some conclusions were made as to how to overcome this quite neglected state of affairs, at least until new archival law is drafted and adopted, which is expected to eliminate all abovementioned shortcomings. As the first step, it was agreed to work on the so called joint List of categories of records material with storage deadlines, where archivists would determine the same categories of records material for several creators and owners, and records offices would only have to fill in the questionnaires with the data on the history of records office and give the explanation for the List. It was also agreed that the State Archives is to offer a form for proper listing of worthless records material, in order to facilitate such a procedure to owners. As a big shortcoming of archival service it was stated that although in 1992 the State Archives became an administrative organization, the inspection supervision and control of office and archival operations have never become true.

With all the problems of social transition and its extremely negative reflection onto the high quality protection of archival material in Montenegro, additional difficulty was the fact that in the meantime a whole set of laws was adopted touching upon archival activity as well, but in the procedure of their passing and further application the State Archives was not consulted or included (the Law on free access to information, Law on the protection of intellectual property, Law on electronic signature, Law on electronic commerce, various regulations on deadlines for storing electronic texts, Rules of procedure of courts, etc.). These are in many segments in collision with the existing Law on archival activity.

On the preparation of the new Law on archival activity

Recently, a Task force was formed at the Ministry of culture, media and sport of Montenegro for the drafting of new archival law. It is expected from the task force to draft a main new archival legal act which would be in line with archival laws of the countries that are already EU members or on the road to accession. The Government of Montenegro has got a condition set by the EU and which needs to be realized, even in the field of archival profession. This requirement should be fulfilled in a very short period of time and they are not very much worried about the found condition.

At the very beginning of work of the Task force there is a problem related to the request of the Ministry not to touch upon the existing centralized organization of archival service, although according to the analysis of the condition of archival activity this created

10. *Zaštita arhivske građe. Neophodna kontrola arhivskog poslovanja, (Protection of archival material. Indispensable control of archival operations)* „Pobjeda“ April 11th 2007.

significant obstacle exactly in the modernization of archival profession. In reform processes in Montenegro, in the nineties the processes of etatization and centralization were getting stronger, which extremely negatively reflected upon the protection of the entire archival material. However, the processes of democratization, which in the meantime caught culture as well, should just to be carried out through the processes of de-etatization and decentralization, which means that rights and obligations for the development of cultural policy get more and more transferred onto regional and local levels of authority. However, in Montenegro there is still present the tacit resistance to such processes in the governing structure primarily, which is often justified by the reason of a small state territory and economic consequences of such changes. The reality is that such organization of archival service is in fact completely closed for the changes brought by the transition of Montenegrin society.

What creates a confusion to me as a member of the Task force at the beginning of work is how to *ad hoc* "fill up", or cover by a new law, the legislative vacuum that used to be present in previous period, in the years of greatest transitional and technological changes in Montenegro, which in turn left visible consequences on the state of preservation of archival material. How much archival material has been destroyed during numerous ownership transformations, starting from the nineties of the past century until today, remains completely unknown for Montenegrin archivists? Who is responsible for that, archivists or governing structures that passed the law without consulting experts? How to implement a modern law in the conditions of extreme neglect or lack of awareness on the importance of archival material, both with creators or owners of archival material? How to give priority significance to archival law and archival profession when there are already effective laws which indirectly touch upon the field of archival activity, and which were passed and are implemented without the participation of archives?

It is certain that the new and modern Law on archival activity is indispensable. It will be passed in Montenegro more as a result of the compilation of experiences and legal regulations of developed European countries and those which have long passed through the process of transition, and it will be less based on the own experience, legislative tradition and found condition.

In any case, this time the issue of the care for private archives as a vital part of our recorded heritage may not be avoided or marginalized.

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