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History of the archival legislation development. Composition of the archival legislation of the Russian Federation. The law on archives management in the Russian Federation. Regulations of the law. Basic concepts. Powers of controls in the field of archives management. The Archival fund: composition; the order of records inclusion into the Archival fund; property types on archival records; protection of property rights on archival records. Archives management in Russia. Legal bases of storage and control of archival records. Acquisition of archives by the archival records. Disposal dates of the archival records. Legal bases of access to the archival records and their use. Subordinate legislation acts on archives management in the Russian Federation.

LARIN, Michail V., La legislazione archivistica russa. Atlanti, Vol. 20, Trieste 2010, pp. 69-75.

Storia dello sviluppo della legislazione archivistica. Composizione della legislazione archivistica della Federazione Russa. Regolamenti legislativi. Concetti base. Poteri di controllo nel settore della gestione degli archivi. I fondi archivistici: composizione; l'ordine dell'inserimento dei documenti nei fondi archivistici; tipi di proprietà dei documenti archivistici; protezione dei diritti di proprietà sui documenti archivistici. Gestione degli archivi in Russia. Basi legali per il deposito ed il controllo dei documenti archivistici. Acquisizione di archivi attraverso i documenti d'archivio. Date di scarto dei documenti d'archivio. Basi legali dell'accesso agli documenti d'archivio e loro utilizzo. Atti legislativi subordinati sulla gestione degli archivi nella Federazione Russa.

Introduction

The Russian archival legislation is deeply rooted having its history since XIX century. At that time the problem of preservation of the Russian State historical memory in archives has been realized first. The active work on archival repositories creation in the Russian provinces has begun. By that moment many historians and archivists understood negative consequences of the absence of archives management system and dissociation among the archives. The archival reform, which was planned by the Union of the Russian archival personalities, was necessary (RAD). However, ironically the reform of archival matter has occurred within the revolutionary process of the Soviet Russia.

On the 1st of June, 1918, the first act in the history of Russia - a Decree "About reorganization and centralization of the archival matter in the RSFSR" was accepted. This act has legalized a principle of archives management centralization, founded the Uniform state archival fund (EGAF) and created the authority to control it - the Main archival administration (further - the Tsentrarhiv of the RSFSR). Archives of provinces and districts were included into the EGAF. Then the EGAF structure extended by the inclusion of all new archives and archival funds.

After the USSR creation the main administrative body of All-Union importance was the Central archival agency of the USSR (TsAU of the USSR). After a number of changes this body has got the higher status - the Main archival agency under the Council of Ministers of the USSR. The practical activity of archives was directed by the act - regulations about the State archival fund in various editions.

Despite the authorities attempts to solve some actual problems of archival business: competence divisions between the Union and union republics, simplification of users access to the records, overcoming of departmental dissociation of archives, making categories of archival records values and other questions by administrative methods, legislation of archival matter in the USSR have not developed. The Soviet Union has not created a special archival law, so archives and archival matter existed as the appendage of the state, not society.

The first attempts of the archival law creation

After the USSR disintegration and declaration of new Russia, preservation of the archival funds inviolability in their storage places became the first problem of the Russian archivists. On 6th of July, 1992, leaders of the states, formed in the previous USSR territory, signed the agreement according to which, "under the principle of integrity and indivisibility of funds generated as a result of the activity of the higher state structures of the former Russian empire and the USSR, stored in the state archives outside their territories, do not apply on the rights to be in possession of these documentary materials"¹.

Another important problem was to work out the archival legislation. The Soviet experience has shown that regulating the archival matter by means of the separate statutory acts, which do not have the law status, does not cover all parts of archival matter, not identify a legal status of archives in the state and does not allow to form the perfect relations between archives, citizens, society and state.

The first version of the archival law was prepared by archivists in 1991. While its consideration in the Supreme Soviet, the law was changed and turned from the law of direct action into the "Bases of the Russian Federation legislation on Archival Fund and archives". A number of important technological norms has been excluded from it and that has affected the quality of archives acquisition.

The imperfection of this document led to the situation when the separate subjects of the Russian Federation declared the archival records being in their territory not entering into the Russian Federation Archival fund.

At the same time it is necessary to mention that adoption of the law even in a reduced form allowed to fix legislatively a number of major principles of the archival matter which are important even today. First of all, this is differentiation of the state and not state parts of the Archival fund of the country depending on a pattern of ownership. Such approach was in line with the social development of the state. Then the law has consolidated a principle of archives publicity, in particular, the state part of the archival fund. A veto was put on the irrevocable export of the records of the Russian Federation Archival fund out of the country. The archives de-politicization also has been legislatively fixed².

However, issued in 1993 before the adoption of the Russian Federation Constitution the "Bases of the legislation..." instantly needed specifications and additions. It was necessary to formulate them in the Regulations on the Russian Federation Archival fund confirmed by the Decree of the Russian Federation President in March, 1994³. The regulations included a set of important norms on the work with archives, in particular, the acquisition of the state archives and their relations with the departmental archival funds. Some of the funds got the right on depository long-term storage of the records from the state part of the Russian Federation Archival fund.

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Avtor podaja kratke naslove tem, ki jih obravnava v svojem prispevku: Zgodovina razvoja arhivske zakonodaje, značaj arhivske zakonodaje v ruski federaciji, zakonski predpisi, osnovni pojmi, kontrola na področju arhivskega upravljanja. Ustroj arhivskih fondov, vrstni red dokumentov, ki ustvarja arhivski fond, tipi lastništva arhivskih dokumentov, zaščita lastništva pri arhivski dokumentaciji. Upravljanje z Arhivi v Rusiji; zakonodaja pri skladiščenju dokumentacije in kontrola arhivskih dokumentov. Pridobivanje dokumentacije v arhiv. Razporejanje dokumentacije po času nastanka. Zakonodaja pri dostopanju do arhivskih dokumentov in njena uporaba. Odvisnost in podrejenost arhivske zakonodaje glede upravljanja z arhivi v ruski federaciji.

SUMMARY

The modern archival legislation is based on the traditions, established in the Soviet period of archival matter development in conditions of centralized administration. In modern Russia the methods of administrative management of archival matter are replaced by legislative regulations. In 1993 Bases of the legislation on archival matter and archives were adopted. In 2004 they have been replaced by the Federal law "About archival matter in the Russian Federation". This law regulates the main state functions in the archival matter, defines the status of archival service in the country and fixes democratic forms of access to the archival information. The law differentiates the property rights to the archival records between the subjects of civil law and defines responsibility of proprietors for appropriate preservation of the archival records included into the Russian Federation Archival fund.

1. R.G. ПИХОЯ, *Archival passions*, "Historical notes", (1995), n. 1(119), p. 234.
2. V. P. KOZLOV, *God was preserving the archives of Russia*, Cheljabinsk 2009.
3. *Collection of legislative and normative legal acts on archival matter*, M. 2002, p. 128-13

The modern archival legislation

After the Constitution adoption in 1993 the Russian legislative activity rapidly extended. The creation of a democratic lawful state demanded more and more new laws. Their contents were not always coordinated with operating archival legislation. One can name more than ten laws which contents contradicted with the

“Bases of the legislation of the Russian Federation on the Archival Fund and archives”. For example, its provisions about the status of municipal archives, property differentiation on archival records broke the regulations of the Main law of the Russian Federation. So the archivists should have prepared a new bill.

The New Federal law “On the archival matter in the Russian Federation” N 125-FZ was accepted on the 22nd of October, 2004. Its structure includes 9 chapters:

Chapter 1. General provisions

- Article 1. A subject of regulation of the present Federal law
- Article 2. The legislation on archival matter in the Russian Federation
- Article 3. The basic concepts applied in the present Federal law
- Article 4. Powers of the Russian Federation, the Russian Federation subjects, municipal unions in the archival matter

Chapter 2. The Russian Federation Archival fund

- Article 5. Composition of the Russian Federation Archival fund
- Article 6. Inclusion of archival records in the Russian Federation Archival fund
- Article 7. The archival records concerning state ownership
- Article 8. The archival records concerning municipal property
- Article 9. The archival records concerning private property
- Article 10. Special features of the legal status of the archival records which are the property of the Russian Federation, subjects of the Russian Federation or municipal unions
- Article 11. Special features of the civil turnover of records of the Russian Federation Archival fund, being private property
- Article 12. Protection of property rights to archival records

Chapter 3. Archives management in the Russian Federation

- Article 13. Creation of archives
- Article 14. Organization of archives management in the Russian Federation
- Article 15. Financial and material and technical support of archival matter
- Article 16. The control over observance of the legislation on the archival matter in the Russian Federation

Chapter 4. Storage and control of archival records

- Article 17. Duties of state bodies, local governments, organiza-

tions and citizens who are engaged in business activity without formation of the legal person, on archival records preservation

Article 18. Storage of the Russian Federation Archival fund records

Article 19. The state control of the Russian Federation Archival fund records

Chapter 5. Acquisition of archives by archival records

Article 20. Acquisition sources of state and municipal archives by archival records

Article 21. Transfer of the records of the Russian Federation Archival fund on permanent storage

Article 22. Disposal dates of the records of Russian Federation Archival fund before their transfer on permanent storage

Article 23. Duties of state structures, local governments, organizations on acquisition of state and municipal archives by archival records

Chapter 6. Access to archival records and their use

Article 24. Access to archival records

Article 25. Restrictions on the access to archival records

Article 26. Use of archival records

Chapter 7. Responsibility for breaking the legislation on archival matter in the Russian Federation

Article 27. Responsibility for breaking the legislation on archival matter in the Russian Federation

Chapter 8. International cooperation

Article 28. The international cooperation of the Russian Federation in the archival matter

Article 29. Export and import of archival records

Article 30. Export and import of archival records copies

Chapter 9. Final provisions.

Apparently from the law structure, it covers all the archival activities and almost all processes of the archival matter. Let's pay attention to a set of peculiarities of this law. First of all, it has got the higher status of the law - it became the federal law of direct action. The law contains more detailed and technological questions of the archival work organization in all the directions. After the law adoption the Regulation about the Russian Federation Archival fund was cancelled as its basic norms were included into the new law. This law defines the competence of the Russian Federation subjects as far as the archival matter is concerned. It does not abolish local legislation, but puts forward a norm of conformity, not contradiction of the local archival laws to the federal law. The action of the law regulating storage, acquisition, control and use not only the records of the Russian Federation Archival fund (i.e. the records which are subject to eternal storage), but also other archival records with temporary disposal dates is considerably expanded.

Norms of the law are carefully coordinated to the current legislation, especially the norms concerning the differentiation of conduct and powers between the Russian Federation, its subjects and municipal unions. The separate powers are defined for the local governments in the archival matter. It is necessary to mention that all the norms, concerning properties on archival records, are brought into line with the civil legislation (the Civil code). The archival records stored in federal archives and financed by the federal budget are declared as federal property. The Russian Federation subjects property includes all archival records stored in the regional state archives which are financed by the Russian Federation subjects budget. Dividing the property on the archival records of liquidated records creators actually in their present storage place, the law only names the really existed things in the country⁴. According to the civil legislation records of the acting records creators represent a part of the organizations - creators property. A civilized form of relations between different proprietors is a contract. A new formula of the archival right is included in the law: the territorial organizations of federal public authorities can give their records for storage into the regional archives only on contractual base⁵. It is also stated there that the records stored in the state and municipal archives are not the property of archives and are not put on the book keeping. It is very important for a tax policy of archives.

According to the law, the archival records, which are in a state ownership, are not subject to privatization and cannot be put up for sale, exchange, donation and also transactions, led to their alienation. The same norm covers the archival records of municipal archives. The law regulates the transfer of the liquidated organizations records for storage to the state and municipal archives, and also in case of bankruptcy.

This law consolidates the democratic norms of access to the open archival personal data, established after the USSR disintegration, taking into account the constitutional laws of citizens on the private life inviolability and protection of the personal data. The norms of access to the archival records are in strict conformity with the operating legal acts about state and other secrets protected by the law.

The essential norm, put in the law, is to keep the uniform rules of storage, acquisition, control and use of the records of the Russia Archival fund and the united body on archival matter management in the country.

“The Rules of storage, acquisition, control and use of the records of the Russian Federation Archival fund and other archival records in the state and municipal archives, museums and libraries, the organizations of the Russian Academy of Sciences” were approved by the order of the Ministry of culture of the Russian Federation n. 19 from January 18, 2007. These rules give practical tools on application of archival law to each archivist.

It is necessary to say that some questions of the archival matter are solved by the adjacent legislation⁶.

4. A.N. ARTIZOV, *Project of the Federal law "About archival matter in the Russian Federation" and the archival legislation*, "Otechestvennye arkhivy", 2003, n. 5, p. 6.

5. *Ibidem*.

6. "About information, information technologies and protection of information" from July 27, 2006, n. 149-FZ; "About electronic digital signature" from January 10, 2002, n. 1-FZ; "About consideration of applications of the Russian Federation citizens" from May 2, 2006, n. 59-FZ; "About personal data" from July 27, 2006, n. 153-FZ, etc.

Critical remarks

The terminology question became the first one to be discussed in the archival community. It concerns the definition of “an archival record”. In the former legislation the term “a record” and the term derivative of it “an archival record”, i.e. a record which is preserved in the archives because of its importance for citizens, society and state. In the law in force there is only a term “an archival record - a material carrier with the information, fixed on it, and which has the requisites to identify it, and is subject to storage because of the importance of specified carrier and the information for citizens, society, state”.

Besides the unsuccessful and complicated syntactic structure which is unacceptable for terminology system, there are more serious defects in this definition. First of all, there is no distinction between “a record” and “an archival record”, in other words, any record can be archival. It results in unjustified expansion of the archival activity and it is impossible in practice.

And in addition it is not clear about the archival records provenance, what parity between records keeping and archival matter, what life cycle of records is taken place in this case. It is difficult to understand a procedure of records appraisal taking into account that it is necessary to define not only information value, but also a material data carrier. As far as electronic records are concerned it is impossible even to imagine.

Unfortunately, there is no definition of an electronic record and other techno-tronic records in the archival law either. One can think that the law deals only to the paper records. It is only stated there that the Archival fund includes the archival records irrespective of a carrier type. However, there are no precise rules on the work with electronic records in the law. That is, with the fact of electronic records existence, their equality in relation to the records of traditional type, the Russian archival law does not contain regulations on the work with electronic records.

Secondly, differentiating the property right to records, the law does not include a mechanism of the proprietor expenses compensation on the records storage of the other proprietor. For example, how to compensate expenses for records storage of the federal property to the state or other archives of non-federal level where they are actually and historically hold. Such calculations are very complex, so it would be better, in our opinion, not to raise this question in the law, but legislatively to make the archives responsible for storage of those records which were there at the moment of the archival law adoption.

Thirdly, the law is focused mainly on the records of the Russian Federation Archival fund. Private archives are poorly considered, there is no order of their creation, functioning, state control in comparison with the Italian law, for example. The Russian law practically does not concern a huge layer of the records which are not included into the Russian Federation Archival fund. In particular, the order of their destruction is not mentioned.

Fourthly, the temporary disposal dates before their transfer to

the state archives are not valid. According to many archival laws of the European countries, it is necessary to establish the uniform temporary disposal dates of the records in the organizations, without their division on management levels in conformity with administrative subordination in favor of the federal organizations.

A list of unsolved problems in the archival law could be continued. But perfect laws do not exist in the nature so there is a legislation modernization in our country, including the archival law. It is necessary to say that the legislative bodies have approved four amendments to the Federal law "About archival matter in the Russian Federation" for the period of six years. Such situation shows the high quality of this law.

Now Rosarhiv as the executive power in the archival matter has prepared a bill "About modification and additions in separate acts of the Russian Federation concerning powers differentiation in the archival matter". The bill purpose is to resign the commission on the records storage of the federal organizations which are in territory of federation subjects and to define the compensation of expenses from the federal budget.

Conclusions

Thus, the Russian archival legislation has not got a rich history. Nevertheless, it is necessary to note the essential changes of the archival matter legal bases, taken place in last two decades. From the Soviet state machinery appendage the Russia archival matter, owing to the strong legal basis, has turned to a field of activity with the well-outlined powers and responsibility, with precise control system, the competence division between federal center, subjects of federation and municipal unions on archival questions. The archival law guarantees the preservation of the records included in the Russian Federation Archival fund and their democratic use, the access of each citizen to them. The law is not perfect yet, but as a whole for the archival community this law is recognition of archives and archivists activity importance for citizens, society and state and also protects their all-round interests.

Literature

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