

Access to Archival Information in Belarus: Legislation and Practice

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Access to information in the Republic of Belarus is regulated by the Constitution, Law "On Information, Informatization and Protection of Information" and other legislative acts. The basic principles of access to archival information are revealed in Law "On the National Archival Fond and Archives in the Republic of Belarus". The Law proclaims free access to documents stored in state archives and equal rights of Belarusian and foreign citizens to the access to them. Nevertheless, some restrictions in access to archival information do exist. These restrictions depend upon the contents of archival information (state secrets, privacy, etc.) or the decision of those who have the archival documents in their private property or granted them to state archives.

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L'accesso all'informazione nella Repubblica di Bielorussia è regolamentato dalla Costituzione, dalla Legge sull'informazione, informatizzazione e protezione delle informazioni e da altri atti legislativi. I principi base dell'accesso alle informazioni archivistiche sono rivelati nella Legge sul fondo archivistico nazionale e gli archivi della Repubblica di Bielorussia. La legge proclama libero l'accesso ai documenti conservati negli archivi di stato ed egual diritto per i cittadini della Bielorussia e stranieri di accedervi. Ciò nonostante, esistono restrizioni all'accesso alle informazioni archivistiche. Tali restrizioni dipendono dai contenuti delle informazioni archivistiche (segreti di stato, privacy, ecc.) o dalle decisioni di coloro che detengono documenti archivistici nella loro privata proprietà o quando affidati loro dagli archivi di stato.

1. INTRODUCTION

Access to archives in Belarus is regulated by the national legislation which, in turn, is based on the common principles of access to any information in the country.

Basic provisions in this sphere are set out in the Constitution of the Republic of Belarus which defines that the citizens shall be guaranteed the right to reception, storage and distribution of full, authentic and timely information on the activity of the state bodies, public associations, about political, economic, cultural and international life, the condition of the environment (Art. 34). The provisions of the Constitution have been developed in a number of legislative acts, the basic of which is Law «*On Information, Informatization and Protection of Information*».

Particular features of the access to the information stored in archives are regulated by the basic Law "*On the National Archival Fond and Archives in the Republic of Belarus*" (adopted in 1994 with amendments of 1999).

Certain aspects of the access to archival documents are formalised in such acts of the legislation as:

Rules of work of the state archives of the Republic of Belarus (2005);

Basic rules of work of archives of the central and local bodies of state power and control, institutions, organizations and enterprises of the Republic of Belarus (1997);

Rules of work for users in reading-rooms of the state archives of the Republic of Belarus (1999);

Instruction on the conditions of access to documents containing information about privacy of citizens (1996).

2. LEGISLATIVE PRINCIPLES OF ACCESS TO INFORMATION AND ARCHIVES

The main principles of access to information and its use in Belarus are defined by Law "*On Information, Informatization and Protection of Information*" (Art. 4, 6). The basic of them is the prin-

principle of freedom of search, reception, transfer, collection, processing, accumulation, storage, distribution and (or) submission of the information, and also of using information. The corresponding rights are granted to the state bodies, physical and legal persons.

The Law classifies all the information as accessible to the public and the one with limited access (distribution) (Art. 15). Accessible information includes, among other types, the information accumulated in open collections of libraries and archives. The law establishes the principles of timeliness of granting, objectivity, completeness and authenticity of the information, and also of the security of the person, the society and the State in using the information.

Restrictions of distribution and (or) granting of the information can only be stipulated by legislative acts of the Republic of Belarus. In particular, the right to information may not be used for warmongering or extremist activity, and also for commitment of other unlawful actions.

In spite of the fact that the Archival Law had been adopted prior to Law “*On Information, Informatization and Protection of Information*”, the principles of access to information and its use stipulated in both legislative acts are practically identical.

According to the Archival Law the main principles of governing access to archives are the following:

- everyone is entitled to get access to public archives, to the extent secrecy rules and physical conditions allow;
- free access for everyone to documents kept in state archives from the moment of their acquisition,
- foreign users have equal rights with the Belarusian ones;
- users may publish and spread any archival document with reference to its location and storage if only the access to the document is not restricted by the national legislation;
- the prohibition against the creation of secret archives and against keeping secret the location of document holdings.
- Restrictions of access are made mostly to protect national security and privacy of individuals. According to the Archival Law (Art. 28) the reasons for denial of access to documents may be the following:
 - it will cause damage to the national interests;
 - it will damage the preservation of archival documents;
 - it will cause damage to the private interests of citizens;
 - other infringements of the national legislation will follow.

It is obvious that the access to archival documents can be limited on the same bases as the access to any information, which can be received from various sources, not only archival ones. An exception to this rule is the restriction, specific to archives, of access to the archival documents, physical condition of which is unsatisfactory and can lead to their damage or destruction. In this case the legislation provides delivery to users of the copies of archival documents.

Denial of access to the archival document is possible only on the bases specified above (Art. 29). The decision on denial of access to the archival document is taken by the head of the corresponding

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Dostop do informacij je v Belorusiji opredeljen v ustavi, zakonih “Zakonu o informacijah, informiranju in zaščiti informacij” in nekaterih drugih podzakonskih aktih. Osnove za dostop od arhivskih informacij izhajajo iz “Zakona o arhivskih fondih in arhivih v Belorusiji”. Ta zakon zagotavlja prost dostop do dokumentov, ki jih hranijo arhivi, tako za beloruske državljane kot tudi za tuje raziskovalce. Zakon sicer določa nekatere omejitve, ki se nanašajo na določene vrste arhivskih informacij, npr državna skrivnost, zasebnost ipd., dostop pa je velikokrat tudi pogojen z dovoljenjem imetnika zasebnega fonda.

archive. Such decision can be appealed, including judicial procedure.

Unlawful denial of access to the archival document is considered as administrative offence. The Code of Practice stipulates responsibility for illegal denial of access to the archival document (Art. 22.10) in the form of the fine in the amount up to 700,000 Belarusian roubles (about 180 euros). So far there was no precedent of application of penal actions under this article.

3. ACCESS TO STATE (PUBLIC) ARCHIVES

The rules of work of the state archives of the Republic of Belarus define the main principles of use of archival documents to be general availability and openness of documentary information, legality of its search, reception and use (It. 214). All users have equal rights to access to the documents of the archive.

The documents stored openly are presented to all legal and physical persons free of charge. A state archive has the reading-room equipped with the technical facilities necessary for work with documents and their copies. Users in reading-rooms get in their disposal all the finding aids available.

Special rules of access are established for the archival documents containing confidential and other information of limited distribution.

For the work with classified (state secret) documents it is necessary to have a special permission of the certain form issued by the bodies of state security. Acquaintance with classified and partially declassified documents is performed in a special room under the supervision of the archival officer admitted to the work with classified documents.

The documents containing a commercial secret can be submitted only on inquiries of law-enforcement, judicial bodies, Prosecutor's Office, bodies of state control on the cases being investigated. Other users can be submitted such documents only as per the permit of the organization, in the activity of which these secrets have appeared.

Access to and use of the documents regulated by the legislation on the copyright and neighbouring rights, the validity of author's and the neighbouring rights to which has not expired, are performed from the sanction of the author or his successors (assignees). Submission to users of such documents passed to a public domain is not limited.

The arrangement of users' work in the reading-rooms of state archives is determined by special Rules. According to this legislative act users who work in archives in accordance with research plans of their research institutions as well as those who seek for the information for official purposes are admitted to reading-rooms on the ground of official letters issued to them by the authorities or other institutions concerned with the matter. Individual users have to write a formal application to the archives administration. The official letters or personal applications must contain the user's name, scien-

tific degree, profession as well as the theme and purpose of the research.

Similar requirements are established for registration of foreign users for work in reading-rooms. The decision on the admission of foreign users to reading-rooms of archives are adopted by the state archives independently. The permit for work in reading rooms is issued for no more than one year from the moment of registration. After this term expires or the theme changes the user shall submit a new letter or a personal application. For the representatives of scientific institutions regularly working in archives as per long-term scheduled themes, this term can be extended by the archive management without presentation of a new letter.

A personal file is compiled for each user in a reading-room, which includes the following documents: the official letter of the organization, which have directed the user to the archive, or the personal application of the user with the resolution of the archive management about the permit for work in a reading-room, the questionnaire of the user, the orders for the delivery of documents, the orders for copying of documents. Each personal file is noted in the users registration log. Personal files are stored in a reading-room and are transferred to archival storage one year after the end of the work of a user.

A special diary is being kept for registration of users' visits to the archive reading-room.

4. ACCESS TO ARCHIVES OF STATE AND PRIVATE ORGANIZATIONS (ENTERPRISES)

The archival legislation of Belarus mandates each state and non-state organization to create archive for storage of the documents of permanent and long-term (over 10 years) storage.

The Basic rules of work of archives of the central and local bodies of state power and control, institutions, organizations and enterprises of the Republic of Belarus stipulates that the order of access to the documents stored in the archives of the state and non-state organizations, and also the use of these documents shall be defined by these organizations on the basis of legislation requirements. Access to the documents of these archives is granted only as per the sanction of the heads of organizations (Part 11).

The services to researchers in the archives of the state organizations are rendered free of charge. The decision on collection of payment for using documents of the archive of a non-state organization is adopted by it independently.

Reading-rooms (cabinets) should be equipped in archives for creation of conditions for work of researchers with documents. It is forbidden to submit documents for work to researchers outside of archive premises. If the reading-room is absent and its provision in the archive is impossible one or several workplaces for researchers shall be organized.

The researchers are provided with scientific finding aids of the archive and consultations. For work with microcopies and docu-

ments, the text of which is readable by means of technical facilities, the archive should provide the researcher with the corresponding equipment.

The admission of researchers from outside organizations to work with documents of the archive is carried out on the basis of a letter of the organization, which have directed the researcher, or an application of the citizen. The requirements to the contents of such letter or the application are similar to the requirements established for the admission to reading-rooms of the state archives.

The Basic rules specify that the access to the archival document can be denied on the bases established by the legislation. If the access to documents of an archive is denied by the state organization the researcher has the right to demand a motivated explanation of such denial in writing. This right is only granted to the persons engaged in research activity and working in state scientific and educational institutions, establishments of culture. No other persons are vested with such a right (It. 11.4.3).

It follows from the above norms that the access to the documents stored in archives of non-state organizations, can be denied without any explanation of reasons. Moreover, the Archival Law (Art. 28) stipulates that the access to the archival documents being the property of non-state organizations is performed only with their consent. In practice non-state organizations deny access to their archival documents, reasoning that the information containing in them is a commercial secret, though practically the share of such information in a set of archival documents is infinitely small or absent at all.

The requirements to the organization of work of users in the archives of state and non-state organizations and their registration are similar to the requirements established for users working in the state archives.

The comparison of the norms of access established by the legislation to the documents stored in the state archives and the archives of organizations shows that the state archives are the most open for access, and the archives of non-state organizations are the least accessible. Besides, the Archival Law provides that in case of transfer of the documents of a non-state organization for the storage in the state archive on the basis of a contract, the organization shall have the right to impose restrictions on access to such documents and their use.

5. WHEN THE ARCHIVES BECOME AVAILABLE FOR ACCESS

All the archival documents are accessible from the moment of their transfer to state archives, their storing and description, unless secrecy rules apply. The terms of documents transfer from originating authorities, institutions, organizations and enterprises are limited by the Law and vary depending upon the kind of such an authority, institution, etc.:

- for documents originated from the President and his Administration, the Parliament, the Council of Ministers and other

official bodies as well as state organizations in their management the maximum term of temporary keeping before transferring to state archives is 15 years;

- for documents originated from the bodies dealing with foreign affairs, internal affairs, defence and state security - 30 years;
- for documents originated from municipal bodies - 10 or 5 years.

According to the rules in effect the documents of the state and private organizations should be transferred to their archives two years after their completion in records keeping. In practice, however, this procedure is not always observed, and documents are often transferred for storage in archive of the organization after 10-15 and even more years.

6. ACCESS TO ARCHIVAL DOCUMENTS CONCERNING THE PRIVACY OF INDIVIDUALS

The privacy of individuals in the Republic of Belarus is protected by the Constitution, by Law “*On Information, Informatization and Protection of Information*” and other legislative acts. According to the Constitution (Art. 28, 34) each citizen has the right to protection against unlawful interference with his private life, including that with the secret of his correspondence, telephone and other messages, with his honour and dignity. The use of information can be limited by the legislation with a view of protection of the honour, dignity, privacy and family life of citizens and full realization of their rights by them.

Law “*On Information, Informatization and Protection of Information*” (Art. 17) refers the information about privacy of a physical person and personal data to a category of the information, distribution and submission of which is limited. The law refers to such information the data containing personal and family secrets, secret of telephone conversations, postal and other messages, concerning one’s health conditions, etc. Article 18 of this Law forbids to collect information about privacy of citizens without their consent. All the authorities and institutions may collect such information only on the basis of the law. If they hold such information they are responsible for its use and distribution.

More definitively the privacy in archives is protected by the Instruction on the Conditions of Access to Documents Containing Information about Privacy of Citizens. The Instruction clauses apply to state archives, archives of state and private organizations, and enterprises.

As per the Instruction, confidential information about the privacy of Belarusian and foreign citizens may include the following data:

- health condition, family and intimate relations;
- circumstances of birth, adoption, divorce;
- personal habits;
- private correspondence;
- property status;
- intellectual property (e.g. authors’ rights, interests of copyright, etc.);

- files of the Communist Party examining personal moral-ethic matters;
- other information threatening personal security.

In every concrete case it is the director of the archives who is to decide which documents contain information of restricted access. This document shall not be available to the public until 75 years elapsed. Otherwise the user must take a written permission of a person who is concerned with the document.

Nevertheless, documents containing such information can be treated with no restrictions by the officials who act in accordance with Law “*On the National Archival Fond and Archives in the Republic of Belarus*” and the laws concerning investigator activities (i.e. militiamen, prosecutors, KGB officers, etc.). But they are also responsible for the use and distribution of this information.

At the same time citizens have the right to receive full and authentic information which affects their rights and legitimate interests. Thus, Article 34 of the Constitution guarantees to citizens the right to receive the corresponding information known to the state bodies, public associations, and officials. A similar norm is contained in Law “*On Information, Informatization and Protection of Information*”.

The Rules of work of the state archives (It. 248) stipulates that the archive, on the citizen’s demand, is obliged to submit to him for acquaintance all the documents concerning him personally, as well as to make their copies. It should be noted that in case of detection by the interested person of incorrect data on him no amendment of archival documents is allowed. In such cases the documents specifying the information on this person can be attached to his file on his initiative or the initiative of law enforcement bodies.

6. CONCLUSION

The problem of access to archival documents is not exclusively an archival problem, which should be solved out of purely professional reasons. Archivists should be guided by the principles of access to the information and its use set out by the Constitution of the country, as well as the laws establishing common requirements to the order of reception, storage and distribution of the information. Perhaps, the only specifically archival aspect of the access to documents is maintenance of their preservation during use, and in this connection access to information and access to documents become the concepts far from being identical.

In this context the main task of archivists is seen in competent application of the norms of laws, solution of technical problems of access to archival documents, creation of conditions for simultaneous use of archival documents and maintenance of their preservation for the next generations.

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