

Michal WANNER*

*Department of Archives Administration and Records Management. The Ministry of the Interior, Czech Republic, Prague,
Address: Milady Horakove 133, Praha 6 – Dejvice, 166 21, Czech Republic
Phone: +420 233 320 274, +420 2233 341049
FAX: +420 233 320 274, +420 2233 341049
Email: mwanner@mvcv.cz

WANNER Michal, Interim Report on Development of Archives Legislation in the Czech Republic. *Atlanti*, Vol. 20, Trieste 2010, pp. 207-217.

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

The archival legislation in the Czech Republic came through complicated transformation process in the last years. Fundamental changes brought Act No. 499/2004 Coll. on archives and records management and on the amendment to some other acts, but important changes especially in the field of electronic records management and management of digital records were connected with amendment of 2009. The other amendment adherent to creation of the National Digital Archives is prepared now. The contribution describes and comments the most important issues in these legislative regulations and relevant experience. Special interest is devoted to specific solutions in the field of access and private archives.

WANNER Michal, Rapporto sullo sviluppo corrente della legislazione archivistica nella Repubblica Ceca. *Atlanti*, Vol. 20, Trieste 2010, pp. 207-217.

La legislazione archivistica nella Repubblica

1. Regulation No. 29/1954 Coll. of the Government of the Czechoslovak Republic on archives of 17 May 1954. The Regulation was published in volume No. 17/1954 of the Collection of Laws on page 103. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/1954/sb17-54.pdf>.

Interim Report on the Development of the Archives Legislation in the Czech Republic

Archiving has a long tradition in the Czech Republic. The Czech Republic has an extensive network of archives created in combination of the territorial and substantive principles. The mentioned network has been created by its gradual development since the 19th century and is based on legislative rules that remained very stable for a long period of time. However, the archives legislation has undergone substantial changes over the last twenty years. These changes resulted both from the social transformation taking place in Czechoslovakia and the Czech Republic after 1989 and from the introduction of digital technologies. This development has been extraordinarily dynamic and has yet to be completed. This paper therefore aims to point out the main issues and principles that were dealt with by the mentioned legislation and on which it relied. The study naturally focuses on the provisions of the individual laws on archives; however, in terms of comprehension of the mentioned principles, it is also suitable to discuss the implementing regulations, standards and certain fundamental methodical rules which follow on from the legislation and whose importance has lately increased substantially. Since legislative work was being pursued at the time of drafting this paper in respect of another amendment to the Archives Act, the study also includes a legislative outlook for the near future.

Government Regulation No. 29/1954 Coll.

The first legislative regulation governing the area of archives in Czechoslovakia after the Second World War consisted in the Regulation of the Government of the Czechoslovak Republic on archives of 1954¹. The Regulation introduced the legal concept of the Uniform Archival Fond, which encompassed all the records owned by the state and records of the legal predecessors which were selected on the basis of the regulations on appraisal, retention and discarding of records. These records were deemed to be archival records. The Regulation noted that the Fond was deposited in the newly established archives – the Central Archives in Prague (the current National Archives), the Slovak Central Archives in Bratislava, state archives (the later regional state archives) and other archives. The already existing Archives of the Ministry of the Interior, Archives of the Czech Lands, Moravian Provincial Archives in Brno, Silesian Archives in Opava and the network of agricultural-forestry archives were included in this structure of archives. The newly created base for the archives network was subordinated to the methodical guidance of the Mini-

stry of the Interior. Archives of the armed forces formed an exception as they were exclusively subordinated to the bodies of military administration. At the same time, the Scientific Archival Council, consisting of 18 experts, was established as an advisory body to the Minister of the Interior.

The Regulation was very brief, inadequate and imperfect, reflecting the high degree of nationalization in the socialist Czechoslovakia and an attempt of the state to centralize as much information as possible and subject it to its control. Nevertheless, in the initial stage of development of the Czech archival network, the Regulation covered the most urgent needs of the newly formed archives and allowed for their further development. This development took the form of creating a real network consisting of buildings, as well as financial, material, technical and human resources. A network of district archives was thus created in the 1960s within the individual districts, based on the administrative reform of 1960, together with some of the current specialized archives and corporate archives. The first methodologies were also developed, along with the basic rules for processing archival records (1959). The number of archival records managed by these institutions was gradually increasing.

Act No. 97/1974 Coll.

The Regulation ultimately ceased to suit the needs of archival practice in early 1970s. In 1974, it was therefore replaced by the first Archives Act². In particular, the Act specified in more detail the definition of an archival record, extending it to also cover records of municipalities and natural persons. It stipulated the basic processes in the evaluation and selection of archival records; these processes have been retained within the Czech archival system to the present time - i.e. the evaluation and selection of records takes place either within the appraisal process or outside the appraisal process³. The Act was the first to stipulate the duties of agencies, archives and the Ministry of Interior in the protection and selection of archival records. Amongst these agencies, it also included state enterprises. It established the concept of cultural relics and national cultural relics in archives, allowing for the protection and promotion of the most important archival records⁴. The term Uniform Archival Fond was replaced by the term Uniform Archival Fond (hereinafter UAF)⁵. The Act prohibited the export of archival records from the Czechoslovak Socialist Republic without permission of the Ministry of Interior, and stipulated the duty to make available reproductions of archival records declared as cultural relics and national cultural relics. The tasks of archives included, for the first time, supervision over records management in agencies. Archives were thus profiled as a component part of the government, performing functions in respect of other governmental authorities and the general public. However, the law also required that they fulfil certain scientific-research tasks.

The Act established a network of archives of the national committees, including the district archives, which were institutions of the district national committees, and the Prague City Archives and archives of the cities of Brno, Ostrava and Plzeň, which were institutions of the respective national committees⁶. Moreover, it also provided for the creation of corporate archives founded by legal and natural persons operating a business. The category of archives of special

Ceca ha avuto un complesso processo di modificazione negli scorsi anni. Fondamentali cambiamenti sono stati apportati dalla Legge 499/2004 sugli archivi e la gestione documentale e di emendamento ad alcune altre leggi, ma importanti cambiamenti sono avvenuti anche nel campo della gestione dei documenti elettronici, connessa all'emendamento del 2009. E' ora in preparazione un altro emendamento connesso alla creazione dell'Archivio Digitale Nazionale. L'articolo descrive e commenta le più importanti questioni in queste legislazioni e le esperienze più rilevanti. Un accento speciale è posto sulle specifiche soluzioni adottate nel campo dell'accesso agli archivi privati.

2. Act of the Czech National Council No. 97/1974 Coll., on archives. The Act was published in volume 18/1974 of the Collection of Laws on page 0333. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/1974/sb18-74.pdf>.

3. Appraisal process is a procedure aimed to discard records in respect of which retention periods have expired and that are no longer needed for activities of the agency (cf. Sections 7 to 15 of Act No. 499/2004 Coll.).

4. The concept of cultural relics (the current archival cultural relics) and national cultural relics was created with the aim to ensure protection and promotion of the most important archival records. An archival record, archival collection, archival fond or comprehensive parts thereof which, with regard to the period of origin, content, form, agency or external signs, are important for general, national or regional history, history of technology or culture, or, with respect to uniqueness or originality or to other types of singular features, their significance is exceptional for society, may be declared as an archival cultural relic; in respect of sets of archival records, their content and factual unity is taken into account. Decisions on declaring archival cultural relics are made by the Ministry of Interior on the basis of applications lodged by the archives where the archival records are stored, archives maintaining them in the NAH records or their owners. The Government of the Czech Republic may declare the most important archival cultural relics as national cultural relics. Special rules apply to the protection of these archival records and making them available (cf. Sections 21 and 22 of Act No. 499/2004 Coll.).

5. The Uniform Archival Fond (currently the National Archival Heritage – NAH) consists of archival records that are registered in the territory of the Czech Republic. The National Archival Heritage is listed in the basic, secondary and central registries. The basic registering unit consists in an archival fond, archival collection or part thereof or an individual archival record. The UAF/NAH registries are fundamental for identification of what is and what is not an archival record, which is, in turn, important for the legal status and regime of archival records (cf. Section 16 (2) of Act No. 499/2004 Coll.).

6. National committee (NC) was a body of the Czechoslovak government at a level of a municipality, city, city borough, district, region or land in the period from 1945 to 1990. National com-

WANNER Michal, Poročilo o razvoju arhivske zakonodaje na Češkem. Atlanti, Zv. 20, Trst 2010, str. 207-217.

Arhivska zakonodaja na Češkem je v zadnjih letih prešla skozi obdobje zapletenih sprememb, največ v Zakonu o arhivskem gradivu in poznejših amandmajih, predvsem v letu 2009, kjer je prišlo do korenitih sprememb pri upravljanju elektronskega gradiva. Pripravlja se nov amandma, ki bo urejal državne digitalne arhive. Avtor v prispevku predstavlja in komentira najpomembnejše težave tovrstne zakonodaje ter podaja svoje izkušnje. Posebno pozornost pa posveča posebnim rešitvam na področju dostopa do arhivskega gradiva in zasebnim arhivom.

mittees had their formally elected bodies (the assembly and the council of the NC – similar to today's bodies of local governments, i.e. the “assembly” and “council”). In terms of their names, the national committees intended to follow up on the Czechoslovak tradition in the period of early existence of the state, when these bodies were founded as an instrument of the newly established administration in the territory of the new state.

7. Decree of the Ministry of the Interior of the Czech Socialist Republic No. 101/1974 Coll., on declaring archival records as cultural relics and on increased protection of archival records as cultural and national cultural relics; Decree of the Ministry of the Interior of the Czech Socialist Republic No. 102/1974, stipulating the details of transfer of the ownership title to archival records; Decree of the Ministry of the Interior of the Czech Socialist Republic No. 117/1974 Coll., stipulating the criteria for assessing written materials as archival records and details of the appraisal procedure; Decree of the Ministry of the Interior of the Czech Socialist Republic No. 118/1974 Coll., on corporate archives; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 1, on the method of keeping registries of archival records and on the composition of the Uniform Archival Fond in the Czech Socialist Republic; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 2, on the protection and categorization of archival records; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 3, on archives of special importance; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 6, on storing archival records in archives; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 7, on use of archival records; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 12, on state archives; Guideline of the Ministry of the Interior of the Czech Socialist Republic No. 13, on archives of the national committees; Instruction of the Ministry of the Interior of the Czech Socialist Republic No. 10, on the method of keeping registries of archival records.

8. Act No. 343/1992 Coll., amending and supplementing Czech National Council Act No. 97/1974 Coll., on archives. The Act was published in volume 72/1992 of the Collection of Laws on page 1978. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/1992/sb072-92.pdf>.

importance was established, encompassing archives of central governmental authorities, archives containing special types of archival records (radio, TV, film) and archives of universities. For the first time, the Act stipulated that the conditions for maintaining archival records shall also apply to archival records maintained by museums and galleries.

It also provided for the use of archival records. Czechoslovak citizens and Czechoslovak authorities and organizations were allowed to inspect archival records older than 50 years, and more recent ones only with the consent of the director of the archives where the archival records were stored or with the consent of the head of the organization managing the archives, or a body authorized by this person if the archival records were kept in some other archives. Consent to the inspection of archival records less than 50 years old could not be granted in cases where this endangered the interests of the state or society or legally protected interests of living persons. Foreigners, stateless persons, foreign authorities and organizations could inspect archival records kept in the archives only with the consent of the Ministry of the Interior in cases where the archival records were kept in the state archives and with the consent of the head of the organization managing the archives, or a body authorized by this person if the archival records were kept in some other archives. This provision also applied to Czechoslovak citizens inspecting archival records in the interest of foreigners. In spite of the above-specified provisions, the Act provided both domestic and foreign researchers with relatively favourable conditions for studying a majority of archival records kept in the archives. No classified archival records were stored in the archives; these remained in the registries or record centres.

Finally, the Act authorized the Ministry of the Interior to issue a series of implementing regulations. The practice gradually necessitated the issue of twelve decrees, guidelines and instructions⁷.

Act No. 97/1974 Coll. represented a substantial development in the legislation on Czech archives. In principle, this was by no means a poor regulation, as witnessed by the fact that the Act remained applicable, with only a single amendment of 1992, until 2004, even though it was suited to the conditions of totalitarian Czechoslovakia of 1970s.

Act No. 343/1992 Coll.

Based on the changes that occurred in society in 1989, it was necessary to modify the Act as soon as possible. This modification was finally made within the amendment to the Archives Act of 1992⁸. This amendment introduced certain negligible changes in terminology and reflected to a greater degree the increasing plurality of agencies and owners of archival records. A novelty consisted in the subordination of the regional state archives (formerly state archives) to the Ministry of the Interior. These archives were granted the status of institutions of the Ministry of the Interior. The regional state archives in Moravia and Silesia returned to their traditional names – the Moravian Provincial Archives in Brno and the Provincial Archives in Opava. District archives were renamed to district state archives and became expert institutes of district authorities. Archives of the cities

became institutions of the given cities; the Prague City Archives were entrusted with the functions of both the regional state archives and the district state archives in the territory of the Capital City of Prague. Quite unsystematically, the archives of cities newly included the City Archives of Ústí nad Labem, which have been performing the functions of the district state archives in the territory of the district of Ústí nad Labem to the present time.

Furthermore, the amendment further strengthened the position of archives as part of the government, performing supervision over records management and selection of archival records, seeking, verifying and confirming official records for the governmental authorities and citizens, and pursuing the related administrative proceedings⁹. However, as a result of an intervention by MPs, this provision was not accurately defined, which could have led to a collision with the activities of notaries and district authorities.

The Act subordinated the archives of armed forces to the methodical guidance of the Ministry of the Interior and provided for handling archival records of political parties (they could establish their own archives or store records in state archives). It was also the first law to enact professional and financial assistance provided by the state to the owners of archival records for the reason of protection of archival records. It must be noted that, in practice, this provision, which had been initiated by MPs, remained only on paper, particularly because the Ministry of the Interior lacked sufficient funds for its implementation. The state also retained important rights in the area of interfering with the ownership of persons (pre-emptive right of the state, limitation of the right to dispose of archival records).

The conditions for making available archival records were harmonized with the Charter of Fundamental Rights and Freedoms. The period after which archival records could be made available was reduced from 50 to 30 years. The Act stipulated that archival records that were more than 30 years old and were stored in archives could be inspected by anyone, while archival records less than 30 years old could be inspected only with the consent of the director of the archives where archival records were kept. Consent to the inspection of archival records could not be granted if this would endanger the security of the state or public security or legally protected interests of persons. The power to grant or refuse the leave to inspect archival records was strictly entrusted to the director of the archives¹⁰.

In general, it can be stated that the amendment of 1992 enabled archives to operate during the transformation period of the 1990s; however, it dealt with a number of issues only superficially and inconsistently, and it was therefore only a matter of time when a new law would be enacted.

Public administration reform

Extensive reform of the public administration took place in the Czech Republic from 1999 to 2002. Its main pillars included the establishment of 14 new regions, which replaced the original regional order of 1960, abolished in 1991. Another fundamental step lay in the abolishment of district authorities. Archives were most affected by Act No. 218/2002 Coll., on the service of public servants in administrative authorities (the Service Act), and Act No. 320/2000

SUMMARY

The archives legislation in the Czech Republic has undergone dynamic and comprehensive developments over the last twenty years. These changes resulted both from the social transformation taking place in Czechoslovakia and the Czech Republic after 1989 and from the introduction of digital technologies. This development has been extraordinarily dynamic and has yet to be completed. Legislative outlook for the near future is connected with creation of the National Digital Archives in the Czech Republic.

9. In the Czech legislation, administrative proceedings mean the procedure of an administrative authority that is aimed at rendering a decision that establishes, changes or abolishes the rights or obligations of a specific person in a certain matter, or that declares, in a certain matter, that such a person has or has not rights or obligations. Administrative proceedings in a broad sense also include procedures aimed to enforce an administrative decision, procedures aimed at issuing a statement, certificate or notice, procedures aimed at concluding public-law agreements and procedures aimed at issuing a measure of general nature. Administrative proceedings are governed in the Czech Republic particularly by Act No. 500/2004 Coll., the Code of Administrative Procedure, which stipulates the general procedure in administrative proceedings, which is applicable unless other laws stipulate a special procedure.

10. Miluše ČEPELÁKOVÁ, Novela zákona o archivnictví (Amendment to the Archives Act), "Archivní časopis" 42(1992), n. 4, pp. 213-215.

Coll., amending and repealing some laws in relation to the cessation of activities of district authorities. In conformity with this legislation, the Central Archives and the regional state archives ceased to be institutions of the Ministry of the Interior and the district state archives ceased to be institutions of the district authorities. Archives became administrative authorities; however, their competence was not specified¹¹. This status did not affect archives of special importance and archives of local governments. The mentioned legislation strengthened the position of archives as part of the government (public administration) and improved the social position of employees of the state archives; nevertheless, it slightly disappointed the part of the professional public that was more focused on research and cooperation with other cultural institutions.

Act No. 499/2004 Coll.

The new Archives Act was prepared with a relative delay, which was caused particularly by a lack of will to resolve the existing issues, resulting from fears of archivists that the powers of the state in relation to the agencies could be limited. Therefore, the work on the amendment was undertaken only by the new director of the archives administration of the Ministry of the Interior, Dr. Václav Babička, *inter alia*, as a consequence of the need to resolve shortcomings in the legislation connected with the public administration reform. Unfortunately, after initial discussions, it was found that the professional public had no consistent idea of the future legislative development. As a result, the Act was long developed only in a narrow circle of legislative experts, without any discussion with the wider professional public.

As its title indicates, Act No. 499/2004 Coll., on archives and records management and amending some laws¹², was the first to define in more detail which agencies are obliged to keep records and allow for the selection of archival records and what criteria should be used in the selection of archival records, and characterized in detail the selection of archival records in the appraisal process. It codified the basic principles of keeping the registers of the National Archival Heritage (NAH, formerly UAF) which were already developed at that time. The duty of keeping registries of the NAH applied not only to archives, but also to cultural and scientific institutions (museums, galleries, memorials, scientific and research institutions and universities) administering these registries. The methods of discarding archival records from the registries of the NAH were also codified. A majority of this subject was then elaborated in detail by Decree No. 645/2004 Coll¹³.

An extensive part of the Act reflected the diversity of ownership of archival records. Detailed provisions were stipulated in respect of the duties of the owners of archival records in the area of care for and protection of archival records, transfer of the ownership title to archival records, possibilities of and permitting the export of archival records, etc. The basic principles of making archival records available, including the thirty-year period of protection, were retained. Nevertheless, the Act enabled to specify in detail the processes of making available archival records in implementing regulations. It also reflected personal data protection, allowed archives to access the registries of the population and authorized them to collect certain

11. Administrative authority is an organizational body established by law, having competence stipulated by law (Art. 79 of the Czech Constitution), which acts in relation to third parties through its bodies or representatives, who act on behalf or for the given entity, e.g. the state, of which an administrative authority is an organizational component (organizational unit). Administrative authorities are part of the executive power and, in the performance of the state competence, they report to the Government, which provides methodical guidance through internal normative acts. Unlike the courts, administrative authorities are also bound by secondary legal regulations (decrees of ministries and other central administrative authorities, regulations of the Government); they may act only on the basis and within the limits of law (cf. Act No. 500/2004 Coll., the Code of Administrative Procedure).

12. Act No. 499/2004 Coll., on archives and records management and amending some other laws. The Act was published in volume 173/2004. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/2004/sb173-04.pdf>. The commented wording of the Act was published as Special Annex 2 Archivní časopis 55, ISBN 80-86466-06-X.

13. Decree No. 645/2004 Coll., implementing some provisions of the Act on Archives and Records Management and amending some other laws. The Decree was published in volume 220/2004 on page 22637. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/2004/sb220-04.pdf>.

personal data on researchers. It described the possible grounds for refusing the leave to inspect archival records (physical condition of archival records; state of processing; disagreement of the natural person with whom the archival record is concerned; non-compliance with the conditions of the Act by the researcher). It stipulated the right of the researcher to acquire excerpts, duplicates and copies of archival records (details, including the fees, are stipulated in the Decree).

The Act newly divided archives to public and private. Public archives include the National Archives (formerly the Central Archives), regional state archives, specialized archives, security archives and archives of territorial self-governing units (local governments). Private archives are other archives established by natural or legal persons.

The National Archives and the regional state archives obtained the status of organizational bodies of the state founded by operation of law. Regional state archives (there are seven such archives) have territorial competence covering the jurisdiction of one to three new regions, while the competence of district state archives, which became internal organizational units of district state archives, corresponds to the territory of the districts.

The status of administrative authorities in the area of archives was granted to the Ministry of the Interior, the National Archives, regional state archives, the relevant ministries and other central administrative authorities, the Czech National Bank, intelligence services of the Czech Republic if they have established specialized or security archives, the Office of the Chamber of Deputies, the Office of the Senate and the Office of the President of the Republic. Furthermore, the Act characterized in detail the competence of the Ministry and the individual types of archives.

Specialized archives are established by organizational bodies of the state, state contributory organizations, state enterprises, universities, schools and legal persons established by law. Specialized archives serve to store archival records arising in the activities of their founders or in the activities of their legal predecessors. Specialized archives may operate as archives only if they have been granted accreditation. Certain specialized archives that had formerly operated as “archives of special importance” and had a long tradition were accredited directly by law. All specialized archives submit protocols on the performed selection of archival records to the National Archives or the competent regional state archives¹⁴. Archives of territorial self-governing units also operate under similar conditions. This category still includes the Prague City Archives and archives of the cities of Plzeň, Brno, Ostrava and Ústí nad Labem.

Security archives became an entirely new category of archives; these archives may be and mostly have been established by the Ministry of the Interior, Ministry of Defence, Ministry of Foreign Affairs, National Security Authority and intelligence services of the Czech Republic. These archives administer records whose classification has not been abolished. In other aspects, the position of security archives is similar to that of specialized archives.

Private archives created by legal and natural persons became

14. There were 27 specialized archives in the Czech Republic at the time when this paper was drafted. These include 7 archives attached to central governmental authorities, 4 archives with a special type of archival records, 8 archives of universities, 7 archives attached to scientific institutions and 1 archive of a state enterprise.

another new category of archives. The existence of private archives is conditional on granting accreditation, whereby private archives incur the entitlement to professional assistance from the National Archives or the competent regional state archives and the entitlement to a state contribution to the operation of private archives. The basic functions of private archives otherwise do not substantially differ from the functions of specialized archives. The creation of private archives on the basis of accreditation proceedings and state contributions is a unique method in the systems of archives throughout the world¹⁵.

Chapter 6 of the Act described in detail the conditions for granting and removing accreditation of archives. These conditions include particularly the fulfilment of a number of construction and technical, spatial, security, material, financial and personnel conditions for the care for and protection of archival records.

The Act also includes an entirely new chapter devoted to records management. While the supervision over records management had formerly been described only in general terms, now the Act defined those entities that were obliged to provide for records management and also the basic duties of the agencies regarding the individual parts of records management (acceptance, registration and division of records, discarding and signing records, sending and storing records). The details of records management were characterized by Decree No. 646/2004 Coll¹⁶.

Act No. 499/2004 Coll. was enacted under difficult conditions. Without doubt, it aimed at becoming a modern rule in the field of archives, consistently based on recommendations of the EU and international archives organizations. However, a number of provisions were drafted without adequate practical experience and, therefore, difficult to implement. This was most true perhaps in the area of records management, which was regulated in detail by a law for the first time. The need for ensuring continuity led to maintaining a number of historical specificities and thus prevented the adoption of well-proven instruments from abroad (e.g. the duty of the agencies to submit archival records arranged together with an interim inventory list). The authors did not find enough courage to abolish certain obsolete concepts (archival cultural relics, categorization of archival records). Difficulties with law enforcement resulted in that a number of provisions of former decrees and instructions were included in the Act, which made the Act very extensive and unclear and hard to comprehend for the archivists.

The need to adapt the former system to the conditions of the new administrative system and the division of archives to administrative authorities and other archives led to a number of unnecessarily complicated and impractical solutions; specialized archives and archives of the territorial self-governing units lost certain powers particularly in the area of selection of archival records. These problems were perhaps the most sensitive in relation to the Prague City Archives, which lost the position of regional state archives. Many archivists considered that the Act was making them mere officers, which, in their opinion, was not compatible with the traditional position of Czech archivists as researchers in the fields of history and auxiliary historical sciences. Inadequate previous discussion of a number of

15. 11 private archives were accredited in the Czech Republic at the time when this paper was drafted. These include 7 archives of major companies, 1 trade-union archive, 1 archive of a political party, 1 archive of a civic association and 1 archive of a private museum.

16. Decree No. 646/2004 Coll., on the details of records management. The Decree was published in volume 220/2004 Coll. on page 11664. The text is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/2004/sb220-04.pdf>.

solutions as well as generally insufficient political and professional support required for successful completion of the entire process led to several waves of protest against the mentioned regulation, which entailed numerous hysterical, yet absolutely ignorant criticisms on the part of historians and other researchers¹⁷. Those who were opposed to the new Act received considerable attention in the media, which was rebutted only with considerable difficulty in articles published on the pages of professional periodicals by the author of the Act¹⁸. These circumstances in no way benefited the adoption of the Act, but rather initiated various populist and unsystematic interventions in its approval in the Czech Parliament. Consequently, it is not surprising that most archivists already knew at the time when the Act entered into force that a substantial amendment would be required. Therefore, as expected, application of Act No. 499/2004 Coll. became very difficult in numerous aspects. Certain provisions of the Act were mutually contradictory, ambiguous and difficult to implement in practice, or they were incomplete or contrary to other legal regulations. However, given the general political circumstances, the amendment had to wait as much as four years.

Act No. 190/2009 Coll.

The amendment to the Archives Act of 2004 was enacted primarily as a technical amendment rectifying the aforementioned shortcomings. Meanwhile, the process of introducing e-justice and e-government required a more detailed regulation of the institute of records management in electronic form. Therefore, this amendment aimed primarily to remedy the existing shortcomings and to reflect the introduction of new technology. It had been developed in close coordination with other laws forming Czech e-government. In addition to Act No. 111/2009 Coll., on basic registries, this included particularly Act No. 300/2008 Coll., on electronic acts and authorized conversion (generally known as the Data Boxes Act), which required all public authorities to communicate, from July 1, 2009, predominantly in electronic form¹⁹. The most important changes in the Archives Act were thus concerned with electronic records management, which enables to accept and process electronic records and provide metadata for these records.

The amendment also reflected the creation of the Archive of Security Corps, which was established after a dramatic political discussion on the basis of a special law as part of the Institute for the Study of Totalitarian Regimes. These archives keep archival records of security corps from 1945 to 1992, which they took over from the Ministry of the Interior and other authorities. On 1 January 2030, these archives will become part of the National Archives in Prague²⁰.

The amendment introduced a great many corrections of formulations and technical modifications. From amongst more conceptual modifications, it should be mentioned that the amendment introduced the right to establish security archives, which was extended to all security forces. It also provided for certain aspects of accreditation of archives, with the objective of restricting further establishment of specialized archives and thus also division of the archives network. Payment of state contributions was brought into accord with practical possibilities. It clarified the powers of the Ministry and archives as

17. Historici se bouří: Nový zákon nám znemožňuje bádání. (Historians are incensed: The new Act prevents us from doing research). Lidové noviny, 15 October 2003, p. 4.

18. Václav BABIČKA, Legislativní úprava archivnictví – východiska a cíle (Legislative regulation of archives – background and goals), "Archivní časopis", 54(2004), n. 1, pp. 1-20.

19. Act No. 300/2008 Coll., on electronic acts and authorized conversion of records. Published in volume No. 98/2008 Coll., on page 4491. The text is available at http://portal.gov.cz/wps/portal/_s.155/701?number1=300%2F2008&number2=&name=&text=

20. Act No. 181/2007 Coll., on the Institute for the Study of Totalitarian Regimes and the Archives of Security Corps. The Act was published in volume No. 59/2007 Coll. on page 2362. The text of the Act, which differs in a number of aspects from the Archives Act, is available at <http://aplikace.mvcr.cz/archiv2008/sbirka/2007/sb059-07.pdf>.

administrative authorities in the field of archives and in the area of control activities, etc.

Partial modifications were also made in the implementing regulations; specifically, basic prerequisites were established for keeping digital archival records. The conditions for making available archival records, also regulated in a decree, responded to the increasing frequency of thefts in Czech archives²¹.

Most important changes were introduced by the amendment in the area of records management. It stipulated the details of file separation. The amendment thus supplemented and, on the contrary, omitted certain types of agencies that are obliged to provide for records management. It enabled the selection of archival records *ex officio* by agencies that are not obliged to provide for records management. It simplified the selection of archival records in cultural and scientific institutions by recognizing the acquisition and collection activities as equivalent to the selection of archival records outside the appraisal process. The amendment increased the flexibility of the rules for supervision of agencies by individual archives, and extended these rules to include countrymen organizations abroad.

While the previous regulations preferred records management in classical (paper) form, in contrast, in conformity with implementation of the data box system, the amendment prefers electronic records management. In this relation, the Act newly encompasses a number of provisions concerning, e.g. the conversion of records from classical to digital form, as well as proof of authenticity of records in digital form, or more specifically, records sent through the data box system, which is quite an atypical feature. The solution was found in the form of a legal assumption of authenticity of electronic records and transfer of the onus of proof to the one who is contesting authenticity of the record. "In the absence of proof to the contrary, a record in digital form shall be considered to be authentic if it was signed by a valid recognized electronic signature or marked with a valid electronic sign of a person who was authorized to this effect at the time of signing or marking the record, a person responsible for converting the record from analogue form or a change in the format of the record in digital form, or a person responsible for performing authorized conversion of records and marked with a qualified time stamp." This definition allows for retaining authenticity of a records only in the medium term (decades); however, for the time being, it suits the current conditions of e-government.

Changes in records management were so fundamental that they required replacement of the existing Decree, No. 646/2004 Coll., by Decree No. 191/2009 Coll., on the details of records management²². The Decree stipulated, not only details of acceptance of records by the agencies, their marking, registration, distribution, circulation, creation and signing, and use of official stamps, but also sending and storing records, the appraisal procedure and file separation. The Decree newly laid down output data formats of records from the electronic system of records management, storage of records in the electronic registry and submission of digital archival records to the digital archives.

The Act authorized the National Archives to store and make

21. Decree No. 645/2004 Coll., implementing some provisions of the Act on Archives and Records Management and amending some other laws, as amended by Decree No. 192/2009 Coll. The Decree was published in volume No. 57/2009 Coll. on page 2783. The text is available at <http://www.mvcr.cz/clanek/archivni-legislativa.aspx>. The English translation of the Act is also available at this website.

22. Decree No. 191/2009 Coll., on the details of records management. The Decree was published in volume No. 57/2009 Coll., on page 1773. The text of the Decree is available at <http://www.mvcr.cz/clanek/archivni-legislativa.aspx>. The English translation of the Act is also available at this website.

available archival records in digital form from all public archives in the Czech Republic. This provision is not applicable only to archival records selected by security archives of the intelligence services of the Czech Republic. The National Archives were also authorized to perform the methodical and advisory functions in the area of pre-archival care for archival records in digital form and digitalization of archival records.

The authorization of the Ministry of the Interior to issue the National Standard for Electronic Records Management Systems, which stipulates the basic requirements on the functions of these systems and creates unifying parameters for records management related to records in digital form, is also of fundamental importance. The National Standard was published in the Bulletin of the Ministry of the Interior²³. This Standard is based on the European specification “Model Requirements for the Management of Electronic Records - MoReq2”²⁴, which was supplemented by requirements corresponding to the needs of the Czech environment. This concerned particularly requirements on the record registers as the most typical form of records management in the Czech Republic. The Standard requires that public-law agencies, regions and the Capital City of Prague modify the systems of electronic records management according to the requirements of the National Standard not later than by July 1, 2012. It is clear from the above that the National Standard is intended, through the agencies, also for corporations that are engaged in the development and application of the relevant programs that secure the conditions for records management in electronic form. The Standard also includes two metadata models and two XML schemata. These schemata include a schema for sharing records and their metadata amongst electronic records management systems (important particularly for communication through data boxes) and an XML schema for the submission of records and their metadata to the digital archives (SIP).

Overall, it can be stated that the amendment to the Archives Act, No. 499/2004 Coll., rectified the technical shortcomings that occurred in the adoption of the mentioned Act, and thus also created the basic prerequisites for the functioning of agencies producing archival records and the archival network in the digital world. Unfortunately, not all basic aspects of both the project of the National Digital Archives (hereinafter NDA) and the technical solution for depositories for live data, etc. were clear at the time of adoption of the amendment. These aspects were to be dealt with by a separate law on the NDA; however, it was found during the discussion of the substantive intention of the law that a further amendment to the Archives Act would be more suitable²⁵.

This brings us to the last legislative regulation, which was only being prepared at the time when this paper was drafted. Its creation is closely related to the implementation of the National Digital Archives (NDA) project in the National Archives in Prague. Unfortunately, detailed characteristics of the NDA concept go beyond the scope of this study²⁶. The general objective of the amendment to the Archives Act being prepared lies in the attempt to consistently ensure comprehensive care for digital archival records and prepare conditions for their mass transfer into archives, and to define the tasks of the individual archives and the NDA. Therefore, the amendment

23. Bulletin of the Ministry of the Interior No. 76/2010. The National Standard Electronic Records Management Systems, including metadata models and XML schemata, is available in electronic form on the website of the Ministry of the Interior of the Czech Republic – <http://www.mvcr.cz/clanek/narodni-standard-pro-elektronicke-systemy-spisove-sluzby.aspx> and <http://www.mvcr.cz/clanek/vestnik-ministerstva-vnitra-vestnik-ministerstva-vnitra.aspx>.

24. The Czech translation of the MoReq2 specification was available, at the time when this paper was drafted, on the website of the Ministry of the Interior of the Czech Republic – <http://www.mvcr.cz/clanek/archivni-standardy.aspx?q=Y2hudW09Mw%3d%3d>. At the same time, the Czech translation was being approved in the bodies of the DLM Forum and the European Commission.

25. The material entitled “Substantive Intention of the Act on the National Digital Archives and digital archival records” was discussed by the Government of the Czech Republic on 1 March 2010. The Government required the Minister of the Interior not to draft an articulated wording of an entirely new law, but rather to focus on amending the current Archives Act.

26. Two materials are of fundamental importance in terms of illustrating the basic technical concept of the NDA: the Final Study of the “Project of a workplace for long-term storage and disclosure of records in digital form” (http://www.nacr.cz/zpravy/projekt_nda.aspx) and the Feasibility Study for the National Digital Archives.

will deal with the rights and duties of the agencies producing records in digital form, the details of evaluation and selection of digital documents, the details of their registration and the method of submitting archival records in digital form to the NDA.

The NDA is conceived as a service workplace of the National Archives in Prague that provides for the acceptance and long-term preservation of archival records in digital form and secures the technical aspects of storage, permanent legibility and integrity of archival records in digital form that were selected by regional state archives and specialized archives. It is envisaged that the NDA should also administer digital copies of classical documents created by the archives and also serve as a national portal for making available digital and digitalized archival records through remote access via the Internet. In addition, it is assumed that the NDA should provide researchers with archival records in digital form also on media, based on previously set conditions. The methodical and advisory functions in the area of pre-archival care for records in digital form and in the area of digitalization of classical archival records must also be mentioned. In addition, the amendment needs to provide for all the provisions and functions that have their specific aspects resulting from the digital environment.

The archives legislation in the Czech Republic has undergone dynamic and comprehensive developments over the last twenty years. This paper could deal only with the basic characteristics of this process and in no case was it able to put the described legislative processes into context with the no less important factors in Czech archives that have affected and continue to affect this process. Of the most important factors, we should mention at least the growing network of archives, the extensive construction of buildings for archives and their technical equipment, implementation of information systems, development of foreign relationships, adoption of foreign and national standards and active participation in the formulation of these rules on an international scale, development of archiving and records management methodology, etc. This will be a task for further studies.

