

Legal Foundations of Archival Activities in the Russian Federation

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ABSTRACT

Archives are accountable to the society for compliance of their procedures. A record is a form that provides the contents of information: legislative, scientific, artistic, etc. and thus, it ensures the fulfillment of social functions. Archival legislation is a key element that regulates the functioning of any information sources in the field of archives science. Currently, in Russia there are over 100 legislative acts regulating legal relations in the field of archives. Among other normative acts first comes the Federal Law of October 22, 2004, N. 125-FZ "On archives in the Russian Federation" that regulates maintaining materials of the Archival Fund of the Russian Federation irrespective of their forms of ownership (as well as records keeping in the Russian Federation in the interests of society and the state). The Federal Law "On archives in the Russian Federation" regulates many important provisions, all these ones refer to: authorities of the Russian Federation, the RF subjects, municipal entities in archival science; the Archival Fund of the Russian Federation; inclusion of archival records into the Archival Fund of the Russian Federation; special access and legal requirements for materials in state or municipal property and also private civil records regulations of the Archival Fund of the Russian Federation; formation of archives; archives management in the Russian Federation and other issues. The normative legal acts supervise the access to and usage of archival materials. The key position is the right to use, transfer and spread the information contained in the records for any legal purpose and by any method. The law also provides for both restrictions on and availability of archival materials in the Russian Federation.

Key words: Russian Federation, archival law, Archival Fond of the Russian Federation, Federal law on archives in the Russian Federation

Fondamenti legali delle attività archivistiche nella Federazione Russa

SINTESI

Gli archivi sono responsabili nei confronti della società per la conformità delle loro procedure. Un record è un modulo che fornisce il contenuto di informazioni: legislativo, scientifico, artistico, ecc garantendo quindi l'adempimento di funzioni sociali. La legislazione archivistica è un elemento chiave che regola il funzionamento di eventuali fonti di informazione in materia di scienza archivistica. Attualmente, in Russia ci sono oltre 100 atti legislativi che regolano i rapporti giuridici in materia di archivi. Tra gli altri atti normativi viene innanzitutto la legge federale del 22 ottobre 2004 N. 125-FZ "Sugli archivi nella Federazione Russa" che regola il mantenimento del materiale del Fondo Archivistico della Federazione Russa a prescindere dalla loro proprietà (così come la gestione dell'archivio nella Federazione Russa nell'interesse della società e dello Stato). La legge federale "Sulla archivi nella Federazione Russa" regola molte importanti disposizioni, che si riferiscono a: autorità della Federazione Russa, i soggetti della Federazione Russa, enti municipali nella scienza archivistica, il Fondo Archivistico della Federazione Russa, inclusione di documenti d'archivio nel Fondo Archivistico della Federazione Russa, accessi speciali e requisiti di legge per materiali di proprietà statale o comunale e anche privata del Fondo Archivistico della Federazione Russa, formazione di archivi, gestione degli archivi nella Federazione Russa ed altri argomenti. Gli atti legislativi supervisionano l'accesso e l'utilizzo dei materiali d'archivio. La posizione chiave è il diritto di utilizzare, trasferire e diffondere le informazioni contenute nei documenti per qualsiasi scopo legale ed in qualsiasi forma. La legge prevede, inoltre, restrizioni e disponibilità dei materiali d'archivio nella Federazione russa.

Parole chiave: Federazione Russa, legislazione archivistica, fondo archivistico della Federazione Russa, legislazione federale sugli archivi nella Federazione Russa

Pravni okvirji arhivske dejavnosti v Ruski federaciji

IZVLEČEK

Arhivi so odgovorni družbi za skladnost svojih postopkov. Dokument je oblika, ki zagotavlja informacijam vsebino: zakonodajen, znanstven, umetniški, itd. in tako zagotavlja izpolnjevanje socialnih funkcij. Arhivska zakonodaja je ključni element, ki ureja delovanje vseh informacijskih virov na področju arhivistike. Trenutno v Rusiji obstaja več kot 100 zakonodajnih aktov, ki urejajo pravna razmerja na področju arhivov. Med prvimi je Zvezni zakon o arhivih v Ruski federaciji z dne 22. oktobra 2004, št. 125-FZ, ki ureja hrambo arhivskega gradiva Ruske federacije ne glede na lastništvo. Zvezni zakon o arhivih v Ruski federaciji ureja številne pomembne določbe, ki se nanašajo na: organe Ruske federacije; državljane Ruske federacije; občine; arhivski fond Ruske federacije; vključitev arhivskega gradiva v Arhivski fond Ruske federacije; posebne zakonske zahteve in zahteve glede dostopa do gradiva v lasti države ali občin in tudi ureditev vprašanja zasebnega gradiva Arhivskega fonda Ruske federacije; ustanavljanje arhivov; upravljanje z arhivi v Ruski federaciji in drugo. Normativni pravni akti nadzorujejo dostop in uporabo arhivskega gradiva. Ključna je pravica do uporabe, prenosa in širjenje informacij, ki jih vsebuje arhivsko gradivo, za kateri koli pravni namen in po kateri koli metodi. Zakon pa predvideva tudi omejitve dostopa do arhivskega gradiva Ruske federacije.

Ključne besede: Ruska federacija, arhivski zakon, arhivski fond Ruske federacije, Zvezni zakon o arhivih v Ruski federaciji

Правовые основы функционирования архивов в Российской Федерации

АННОТАЦИЯ

Архивы несут ответственность перед государством и гражданами в документальном подтверждении их юридических прав и социальных гарантий. Документ выступает формой, организующей содержание любой информации: законодательной, научной, художественной и проч. – и, тем самым, способствует осуществлению социальных функций, реализация которых возможна только в обществе. Важным элементом, регулирующим функционирование информационно-архивной сферы, выступает архивное законодательство. Складывание архивного законодательства в РФ началось с первых лет его создания. В настоящее время в России насчитывается более 100 законодательных актов, в той или иной степени регламентирующих правоотношения в архивной сфере. Центральное место в ряду нормативных актов занимает Федеральный закон от 22 октября 2004 г. N. 125-ФЗ «Об архивном деле в Российской Федерации», который регулирует отношения в сфере организации хранения, комплектования, учета и использования документов Архивного фонда Российской Федерации и других архивных документов независимо от их форм собственности, а также отношения в сфере управления архивным делом в Российской Федерации в интересах граждан, общества и государства. Федеральный закон «Об архивном деле в Российской Федерации» регламентирует ряд чрезвычайно важных положений в том числе: полномочия РФ, субъектов РФ, муниципальных образований в области архивного дела, состав Архивного фонда РФ, включение архивных документов в состав Архивного фонда Российской Федерации, деление архивных документов по формам собственности (государственная, муниципальная, частная) гарантирует пользователям определенные условия доступа к ним и особенности правового положения архивных документов, находящихся в государственной или муниципальной собственности (в частности, установлен запрет на их приватизацию); а также особенности гражданского оборота документов АФ РФ, находящихся в частной собственности, создания архивов, организация управления архивным делом в РФ и другие вопросы. Для пользователей исключительное значение имеют нормы Закона регламентирующие вопросы доступа и использования архивных документов. Ключевым является положение, по которому пользователь имеет право использовать, передавать, распространять информацию, содержащуюся в предоставленных ему архивных документов для любых законных целей и любым способом. Законом предусмотрены ограничения на доступ к архивным документам. Степень свободы доступа к информации является важным показателем развития общества и государства, которая опосредованно влияет на поведение личности и органов власти.

The year 2014 was proclaimed in the Russian Federation as the year of culture. One of the most important components of the national cultural heritage are archival documents reflecting the diversity of historical development of the country in whole and the regions and the people who inhabit this country. There is a triad of institutions, which conserve and multiply historical and social memory of the society - libraries, museums and archives; but only archives play a particular role. Archives are responsible to the state and the citizens for the documentary confirmation of their legal rights and social guarantees.

The XXth century in the history of Russia was the century of the great changes, local cataclysms and a particular period in the history of the statehood. The history of formation and development of archives in whole and the formation of archival legislation of the Russian Federation is inseparably linked with changes in politics, economy and ideology.

Modern archival legislation of the Russian Federation whose history began in 1992, has a pronounced inter-branch character operating the norms relating to the different branches of law: civil law, administrative law, working law, criminal law, finance law. At the same time in the modern Russian archival legislation, the continuity with the several positions of the soviet legislation can be traced: that provides a certain stability of relation in the sphere of “the organization of storage, acquisition, accounting and use of the documents of the Archive Fund of the Russian Federation and other archival documents”.

Numerous legislative and normative legal acts regulating legal relations in the field of application of the archival legislation (as well as in related fields) can be classified in accordance with their legal hierarchy in the following sections: first section - The Laws of the Russian Federation; second section - the resolutions of the Supreme Council of the Russian Federation and the State Duma of the Federal Assembly of the Russian Federation; third section - The Decrees of the President of the RSFSR - of the President of the Russian Federation; fourth section - the Orders of the President of the Russian Federation; fifth section - the Resolutions of the Council of Ministers of the RSFSR - of the Government of the Russian Federation; sixth section - the Orders of the Council of Ministers of the RSFSR - of the Government of the Russian Federation; seventh section - the Acts of the Constitutional Court of the Russian Federation; eighth section - the Departmental normative legal acts.

It is significant to note that this system does not include the agreements in the field of archives between the countries - participants of the Commonwealth of Independent States, as well as the list of the basic legislative and normative legal acts of the Federal Subjects of Russia and the municipal legal acts on archives.

For more than twenty years of modern history of Russia, the composition of the legislative and normative legal acts on archives and in the related areas changed: old acts cancelled, new - adopted, but there is a significant number of acts-“old-timers”, enacted in the early 1990s, which remain in force up to the present day.

Among the laws of 1990s for the time being we can note the following: the Constitution of the Russian Federation (1993), “On export and import of cultural values (Federal Law N. 4804-I of April 15, 1994), “On State Secrets” (Federal Law N. 5485-I July 21, 1993), “About acts of civil status” (Federal Law N. 143-FZ of November 15, 1997), “About cultural values moved to USSR as a result of the Second World War and being on the territory of the Russian Federation” (Federal Law N. 64-FZ of April 15, 1998). In the 2000s, new extremely important laws for archives were adopted: the laws relating to the provision of users access to documents, to documental information, including confidential information. Among these laws are “About the trade secret” (Federal Law N. 98 of July 29, 2004), “On personal data” (Federal Law N. 152-FZ of July 27, 2006), “On information, informatization, and the protection of information” (Federal Law N. 149-FZ of July 27, 2006) and the list of others.

The central position in a series of normative acts takes the Federal Law N. 125-FZ of October 22, 2004 “On Archives in the Russian Federation” which regulates relations in the sphere of organization of storage, acquisition, accounting and use of the documents of the Archive Fund of the Russian Federation and other archival documents irrespective of their forms of ownership as well as relations in the sphere of archival management in the Russian Federation in the interests of the society and the state.

The Archive Fund of the country was institutionalized in 1918 and had several names - the United State Archive Fund (EGAF), the State Archive fund (GAF) of the USSR, the Archive Fund of the Russian Federation.

It is important to note that the heads of the CIS on July 6, 1992 have signed the Agreement on succession of the state archives of the USSR. According to this agreement, the countries do not claim to the ownership of the complexes of documents: it is based on the principle of integrity and indivisi-

bility of the funds generated as a result of the higher state bodies and stored in the state archives that are outside the territories of these countries. The parties mutually recognize the transition under the jurisdiction of the Russian Federation, executed in accordance with their national law, of the state archives and other archives of the union level, including the branch archives of the former Soviet Union, which are in the territory of these countries. Thus, a significant part of the documents of “the common history” was at the disposal of the Russian Federation. Hence, the archival legislation of the Russian Federation is of interest to a wide range of users, becoming internationally important.

The Federal Law “On Archives in the Russian Federation” regulates a number of extremely important provisions including:

- authorities of the Russian Federation, of the Federal Subjects of Russian Federation, of the municipal entities in the archival science;
- the Archive Fund of the Russian Federation which includes the archival documents located on the territory of the Russian Federation, without regard to their origin, to the time and the method of their creation, to the type of data carrier, to the form of ownership and place of storage. The Archive Fund includes also the copies of the archival documents on the rights of the originals, as well as the archival documents of the state organizations located in the foreign countries (article 5);
- the inclusion of the archival documents in the Archive Fund of the Russian Federation which occurs only on the basis of the documental appraisal (ECD). ECD is a subject to all the documents on any media and before the ECD, destruction of documents is prohibited (article 6).

It is important to note that the Federal Law marks the indexes of typical archival documents with the retention periods as the obligatory instrument in the ECD.

The indexes becomes the most important supporting instrument for the researchers that allows them to make long-term predictions about the future documentary arrivals in the archives of different levels - municipal archives, archives of the Federal Subjects, federal archives.

In accordance with the norms of the Federal Law “On Archives of the Russian Federation” the Archive Fund of the Russian Federation is divided by ownership: state (article 7), municipal (article 8), private (article 9).

Concerning state and municipal forms of ownership on archival documents the Law establishes clear rules of access and use (article 24).

Thus, the federal property includes archival documents stored in federal archives, federal museums and libraries, in the organizations of the Russian Academy of Sciences; in the Federal agencies of the Russian Federation; the archival documents of the enemy nations of the Russian Federation conveyed to the USSR as a result of the Second World War and located on the territory of the Russian Federation unless nothing else stipulated by the legislation of the Russian Federation on displaced cultural values.

The property of the Federal Subjects of the Russian Federation includes the archival documents stored in the state archives, museums and libraries of the Federal Subject; in the state bodies and organizations of the Federal Subject.

The municipal property includes the archival documents stored in the municipal archives, museums and libraries as well as in the local authorities and municipal organizations.

And finally, the private property includes the archival documents of the organizations operating on the territory of the Russian Federation which are not state or municipal, including public associations from the date of their registration in accordance with the Russian legislation on public associations and including religious associations after the separation of Church and State; as well as the documents created by the citizens and legally acquired.

Thus, the division of archival documents by the forms of ownership provides users with certain conditions of access to them.

For the first time the Federal Law “On Archives in the Russian Federation” establishes the peculiarities of the legal status of archival documents in the state or municipal property (article 10: particularly there is a prohibition on their privatization - paragraph 3), and also the peculiarities of the civil circulation of the documents of the Archive Fund of the Russian Federation which are in the private property (article 11).

The Law regulates the questions:

- the formation of archives including the archives of organizations of different forms of ownership and citizens (article 13);
- the archive management in the Russian Federation (article 14): on Federal level - it is the Federal Archive Agency; in the Federal Subjects - these are the public authorities of the Federal Subjects, including the authorized body of executive power in the sphere of archives; on the municipal level - local authorities.

A number of the articles of the Law is dedicated to the scientific and methodological archival issues ensuring the unity in the field of storage, accounting, the archival documents acquisition, of the temporary storage of documents of the Archive Fund of the Russian Federation in the archives of organizations before transferring to permanent storage (articles 17-23).

However, for the users the norms of the Law regulating the issues of access and use of the archival documents have an exclusive importance.

According to the article 24, paragraph 1 the user of archival documents has the right to search and receive archival documents for the study. This thesis applies to the state and municipal archives as well as to the libraries and museums.

The access to the archival documents provided to the user by giving the user information and search tools (guides, reviews, lists, catalogues, etc.) and information about these tools as well as originals and/or copies of requested documents.

The proprietor or the owner of the archival documents (article 24, paragraph 2) establishes the conditions of access to the archival documents, which are in private property.

The Law provides the limits on the access to the archival documents (article 25, paragraph 2, and paragraph 3). Particularly, there are limits on the access to the archival documents, irrespective to their form of ownership, containing the national information or other information protected by the legislation of the Russian Federation; to the archival documents containing information on personal and family secrets of the citizens, on privacy and information which endangers his life (for 75 years from the day of creation of these documents, but the restriction on access to the documents can be cancelled with the written permission of the citizen, and after his death with the written permission of his heirs).

The Article 26 of the Law defines the possibilities of the use of the archival documents. The dominant is the position, which regulates the rights of the researcher to use, transmit, and distribute the information contained in the archival documents for any legal purposes and by all means.

It is important that the use of archival documents, which are subject to the legislation on intellectual property, is the subject to the requirements of this legislation.

The export of the archival documents, which are in the state or municipal property, outside the Russian Federation is prohibited, as well as the export of the documents of the Archive Fund of the Russian Federation, which are in private property (article 29, paragraph 1).

The import in the Russian Federation of the archival documents acquired and/or obtained legally is allowed (article 29, paragraph 5).

And finally, the position of the Law which is very important for researchers - the export from the Russian Federation of the legally acquired or obtained copies of the archival documents on any kind of data carrier is allowed without restrictions, except for the export of the copies of archival documents to which the access is restricted according to the legislation of the Russian Federation.

Summarizing the content of the normative acts on archives in the Russian Federation, which are systematized on the rest seven sections, we can conclude that a minority of them is devoted to the complex problems of the archives, and the other, the larger part is devoted to the specific issues related to financing and people ware of archives; to the inclusion of certain federal archives to the corpus of the most valuable objects of national cultural heritage of the Russian Federation; to the fixing of the order of declassification and extension of terms of classification of archival documents; to the safety of the documents of the personnel.

A special place is occupied by the departmental normative acts, and in the first place - by the acts of the federal authority for archives which changed its name and its status in the state system several times during 20 years of existence.

Since 2004, it is the Federal Archive Agency within the Ministry of Culture and Mass Communication of the Russian Federation.

Among the normative acts adopted by the archival agency, the approximate positions have an industry-wide importance:

- on the management authority of the archives, state archive; republic, regional, municipal centres of storage of documents and the centres in the cities of the federal importance, of autonomous region and on regional, municipal archives;
- on a standing expert commission of organization and business;
- on the Central expert commission of the ministry (or department);

The rules:

- of the institutional archives;
- of the transfer to the state archives of the books of the state registration of acts of civil status;
- of the organization of storage, acquisition, accounting and use of the documents of the Archive Fund of the Russian Federation and the other documents of the state and municipal archives, museums and libraries, institutions of the Russian Academy of Science;
- for the users in the reading rooms of the state archives of the Russian Federation.

It is evident that the Russian Federation has developed quite an extensive system of archival legislation and its rules regulate the main relations in the archival sphere. Its future development and improvement should follow the path of harmonization of the related legislation as well as with the norms of international legislation in the sphere of exchange and access to the retrospective information.

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[Об обеспечении сохранности документов по личному составу высвобождаемых работников в результате образования, реорганизации и ликвидации юридических лиц, а также социальной защищённости граждан, выполняющих работу по договору]: Распоряжение Правительства РФ от 21 марта 1994 г

SUMMARY

The article “Legal foundations of archival activities in the Russian Federation” concerns the following questions in the archival legislation of the Russian Federation: The history of the modern Russian archival legislation which has a pronounced inter-branch character operating the norms relating to the different branches of law, and there is the continuity with the several positions of the soviet legislation; there are over 100 legislative acts regulating legal relations in the field of archives. Among other normative acts first comes the Federal Law of October 22, 2004, No. 125-FZ “On archives in the Russian Federation” that regulates maintaining materials of the Archival Fund of the Russian Federation irrespective of their forms of ownership; the classification of legislative and normative legal acts regulating legal relations in the field of application of the archival legislation; there is a determination of the Archive Fund of the Russian Federation and the provisions which regulates the composition of the Fund, the inclusion of the archival documents in the Fund; In accordance with the norms of the Federal Law “On Archives of the Russian Federation” the Archive Fund of the Russian Federation is divided by ownership: state (article 7), municipal (article 8), private (article 9); a number of the articles of the Law is dedicated to the scientific and methodological archival issues ensuring the unity in the field of storage, accounting, the archival documents acquisition, of the temporary storage of documents of the Archive Fund; since 2004 there is the Federal Archive Agency within the Ministry of Culture and Mass Communication of the Russian Federation. It is evident that the Russian Federation has developed quite an extensive system of archival legislation and its rules regulate the main relations in the archival sphere.

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