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## Polish Legal Regulations Concerning Providing The Access to Archival Materials in The State Archives. Ethical and Legal Issues

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*Statutes governing archival activity consist of many legal acts, which not only refer to the way archives function but also regulate the ways of documentation handling.*

*The Statute from 14 July 1983 about the National archival collection and archives is a fundamental document concerning archival activity and the state archives in Poland. The scope of State archives activity is growing wider and wider. Now it is not only making archival files available to researchers in reading rooms, but also fulfilling state office duties. It, of course, brings about new challenges connected with legal and ethical problems.*

**Key word:** *general (3.3.1.)*

**MAROSZ, Magdalena, Disposizioni legali in Polonia concernenti il fornire accesso ai materiali d'archivio negli Archivi di Stato. Questioni etiche e legali. Atlanti, Vol. 16, N. 1-2, Trieste 2006, pp. 95-101.**

*Le disposizioni che regolano l'attività degli archivi consistono di molti atti legali, che non si riferiscono solamente al modo in cui gli archivi funzionano, ma che regolamentano anche le modalità di trattamento della documentazione.*

*Il Regolamento del 14 luglio 1983 riguardante i fondi archivistici nazionali e gli archivi nazionali è un documento fondamentale che concerne l'attività archivistica e gli archivi statali in Polonia. Il raggio d'azione del lavoro degli Archivi di Stato sta crescendo sempre più: Oggi come oggi consiste non solo nel rendere disponibile il materiale ai ricercatori nelle sale di lettura, ma anche nell'adempiere ai*

The state archives in Poland keep archival materials, constituting the state archival collection, which have been created as a result of the functioning of state and local government organs and institutions. The archives also keep the following materials (if they have become the state property through purchase, donation or in another way): files of political parties; political organisations, co-operative, social, occupational, economic and other non-state organisations; churches and denominational organisations; political, social and economic activists, scholars, artists and other persons who have contributed to the development of political, cultural or economic life; families which have had historical influence on the state matters, political, economic and social relationships.

The state archives collect archival materials on the basis of two principal rules:

1. the rule of territorial attachment, which provides that the connection between the archival materials and the area where they were created should be respected
2. the rule of archival material unity, saying about the indivisible character of an archival unit.

The knowledge about the application of the above-mentioned rules may be helpful in locating the archival materials which are searched for, but much more detailed information is provided by archival auxiliary materials (guidebooks and directories showing the scope of archival collections, archival inventories, thematic guidebooks and directories). A valuable help is the SEZAM database, providing the information at the level of an archival collection (in a nation-wide version available on the web site of the Head Office of the State Archives: [www.archiwa.gov.pl](http://www.archiwa.gov.pl); in the "local" versions on the web sites of a given state archive). The information at the level of an archival unit is provided by the IZA database (Archival Unit Inventory), also available on the Internet pages of the Head Office of the State Archives and the pages of individual archives.

## Rendering the files for use in the state archives

The notion of rendering the files for use in the state archives should be understood in the broad sense of the term. Thus, it means both making the files available for use in the reading rooms and carrying out research at individuals' request as well as a completely different, specific type of activity: popularising of the archival collection through demonstration of archival materials, exhibitions and the Internet presentations. The group of people making use of the state archival collection is also very diverse. These are scholars from various fields, conducting their research, who make use of the files in the reading rooms or ask the staff to conduct archival thematic research for them; students for whom presentations or lectures are conducted on the basis of original documents, who also use the files for their seminar papers or MA theses; or other state archive users (both the ones who make use of the files in the reading rooms themselves and those who order the research to be done for them): private individuals, lawyers, institutions and offices searching the files for genealogical aims, legal and proprietary aims, establishing the right to pension, to indemnity (e.g. the war and communist victims, those who suffered during repatriation). We should not forget, of course, about quite a big group of amateur historians doing research on their own family, town or region.

Such a diversity of people making use of the Polish state archive collection results in great scope of expectations towards the archives and archivists, the functioning of the state archives as well as the preparation to making use of the files.

It should not be forgotten that the state archives are not only the institution keeping files of historical value and dealing with their analysis, publication and rendering them for use, but they are also (and recently most of all) state offices.

In the recent years the state archives in Poland have been going away from the tasks and duties which enabled to treat them exclusively as scholarly institutions. They have been accepting the function of state offices, ascribed to them by legal regulations. This fact brings about the necessity to apply legal regulations proper for state offices: apart from the Archival Statute also the Administrative Code (KPA), the Statute on Protection of Personal Data as well as other statutes and regulations dealing with more detailed matters connected with rendering the files for use by the archives.

So, in each case connected with rendering the files for use, both in the reading room and in the form of an ordered research, the archive employee has to decide if a given matter is an ordinary commercial activity or an administrative procedure.

If the files are rendered for use for genealogical or scholarly

*doveri di un ufficio statale. Ciò, naturalmente, comporta nuove sfide connesse a problemi di natura etica e legale.*

**MAROSZ, Magdalena, Pravne uredbe pri urejanju dostopa do arhivskega gradiva v poljskih državnih arhivih. Etični in pravni vidiki. Atlanti, Zv. 16, Št. 1-2, Trst 2006, str. 95-101.**

*Zakonske odredbe, ki določajo arhivsko dejavnost, so sestavljene iz mnogih pravnih aktov, ki se ne nanašajo zgolj na delovanje arhivov, ampak določajo tudi upravljanje z arhivsko dokumentacijo.*

*Pri oblikovanju arhivske dejavnosti je najbolj pomembna zakonska uredba, ki je nastala 14. julija 1983 in ureja arhivsko dejavnost v poljskih državnih arhivih. Delo državnih arhivov pa je vedno večje in širše. Ne samo za pripravo arhivskih fondov za uporabnike v čitalnicah, temveč gre tudi za urejanje dolžnosti državnih uradov, kar pa prinaša novosti, ki so povezane s pravnimi in etičnimi problemi.*

aims, where no authenticated copies, certificates, transcriptions or written information from documents are made, the KPA (Administrative Code) regulations do not apply. This does not mean, however, that no other legal regulations apply in such cases, e.g. the Statute on Protection of Personal Data or the regulations concerning the protection of proprietary rights.

On the other hand, all cases which end in issuing an official document (an authenticated copy, a certificate, a transcription or written information from a document) put the archive in the position of an administrative organ and have to be dealt with according to the Administrative Code (KPA) regulations. Those regulations define not only the procedure of dealing with a given case, but also the dates of and the mode of appeal against a given decision. The correspondence carried on within the scope of administrative activity has to be delivered by a certified mail. The electronic form of the correspondence may be used only if the applicant asked to be sent the correspondence in this way or has given his consent. Electronic documents must have a safe electronic signature and possess a specified electronic format. The person applying to the archive as to an administrative organ has to prove that they are a party according to the Administrative Code regulations, that means that they have a legal duty or interest in a given case. They can apply personally or by an authorised proxy, who has to present the original or officially authenticated copy of the statement of being a proxy. As the Statute on Inland Revenue Fees applies to all letters submitted to the archive, the appropriate stamps of inland revenue fee must be stuck on each letter in accordance with the regulations currently in force. In each official case a written answer from the archive must have a form of a ruling (if the archive is not a proper organ to deal with a given case and forwards it to another state office - administrative organ) or of a decision (individual decision taken in a concrete case). Both the ruling and the decision must have a precise form: they must provide a legal basis on which they were taken; the information who is issuing them, when and who for; they must include the decision itself together with its justification; present the way and dates of appeal from the decision; they must be signed by a person entitled to do so.

The majority of archivists working in Polish state archives are graduates in history or other humanity studies, rather not in law. The graduates in administrative subjects are very rare, thus it is not easy for them to solve legal issues connected with the functioning of the archive as a state office - an administrative organ. It is even more difficult because very often their clients are experienced lawyers. Of course, experience is of a great help here: the majority of cases dealt with in this way are very similar, but it occurs that in some cases we have to ask for help the lawyers employed by the Head Office of the State Archives in Warsaw.

## Rendering the files for use in the state archives for scholarly aims

Professional historians are well prepared to make use of the state archival collection. They have a good grasp as far as the archival collection is concerned; they know exactly which files, even at the level of an archival unit, they want to use. They also know which inventory aids they can use and they often do it on the Internet. The remarks the people from this group often make refer first of all to certain limitations imposed by our inner regulations concerning the way and principles of rendering the files for use. The regulations currently in force in the state archives referring to the way the reading rooms should be used were prepared on the basis of the recommendations of the head Office of the State Archives. They are adjusted to accept also the regulations existing in other countries which aim at the protection of the rendered archival materials. That is why they include, among others, the regulations saying that no Xerox copies will be made of the materials prior to 1900 (they can only be photographed or scanned); that the files which are seriously damaged and which require conservation will not be rendered for use and that if reproductions of certain files exist the originals of those files will not be rendered for use, either.

About half of the questions which appear in the correspondence carried on with the representatives of academic circles concerns basic questions about the archival collection. A great help both for the archivists and the archives users are the archival databases (SEZAM, IZA, ELA - gives the information about the files concerning the registers of the population, PRADZIAD - providing information about the birth, marriage and death records). In other cases we are asked by scholars to conduct a thematic research for the sake of their own projects. We do not conduct the research of this kind. We refer the interested people to the inventory aids and we encourage them to use the files in the reading rooms on their own. This kind of work, first of all, goes beyond the duties of the state archive employees; besides, we assume that each scholar studying a given subject should conduct a source material research on his own.

Amateur historians are usually badly prepared to use the files. They often expect a very great help from archivists, counting on the immediate response with the information they are interested in. They do not hide disappointment when they learn that they will have to do the research on their own, sometimes in several or several dozens of file collections, having found them in the appropriate archival units inventories. They are also discouraged by a foreign language and handwriting, so it happens that they give up their search.

We do not limit the access to the files in the case of people conducting academic research. However, they have to sign a statement that they are going to use any information of genealogical or

proprietary character only for their scholarly work. Students who want to use the archival collection are asked to present a certificate from their university with the precise subject of their research. According to the regulations currently in force, the state archives render the files for use 30 years after their creation if - as it was defined by the legislator - this does not violate the legally protected interest of the state or its citizens. For academic purposes it is possible to obtain access to the files at the consent of the director of the state archive keeping the files. The time limit does not refer to the access demanded for scholarly aims to the files created until 1989 in the connection with the functioning of political parties and organisations. In both cases, however, it is possible if the legally protected interest of the state or its citizens are not violated.

The archive can deny access to the files if the applicant is not properly prepared to conduct independent academic research.

A great help in the use of files, both for the archive users and the archivists themselves, is the possibility of bringing microfilms from other state archives (more rarely other kinds of reproductions). In 2005 we brought 200 microfilms from other archives to the reading room of the State Archive in Cracow, mainly for conducting academic research.

## Rendering the files for use in the state archive for genealogical, proprietary and official aims

All persons who make use of the files for their own genealogical research are obliged to sign a statement that they are searching for information concerning the members of their family or the family of a person they are a proxy of. This is the only required formality, imposed on us by the Statute of the Protection of Personal Data.

A separate group of users are the people applying to the archive, personally or by correspondence, who want to solve their legal and proprietary, pension, indemnity and the like matters. A great majority of them do not know much about the specific organisation of the archive. They think their requests will be dealt with immediately and that they will find all documents in one place. They do not understand that some part of the files may be kept in some other institution or that some files may not have been preserved. They show the lack of understanding and often irritation when they learn that not all the files are available unconditionally and that we are subject to the regulations of the Administrative Code and other legal acts protecting the personal and proprietary rights (this refers mainly to the files of genealogical, legal and proprietary nature).

The persons interested in the access to the files connected with the proprietary rights have to present a proof that they are a

party according to the Administrative Code. If the search is to be conducted on behalf of another person, it is necessary to present a specific statement of being a proxy.

Institutions and corporations conducting genealogical or proprietary search for official purposes should also present a proof that they are a party according to the Administrative Code, that means that they have a legal interest or duty in the case which is being dealt with, which follows from the statutory obligations of a given institution or from a court decision. Persons conducting the search on behalf of an institution are obliged to present a personal authorisation that they are entitled to do a search in a given case.

The state archive employees can, at the request of individuals or institutions, search the archival materials for the information of genealogical or proprietary nature. This kind of work, though, goes beyond the scope of their duties and is payable.

However, the search concerning the repression during World War II and communist period is free of charge. It concerns confirmations of the time of imprisonment, stay in labour camps, concentration camps; as forced labour force in the III Reich; work in the area of general Government; repatriation of Poles from the parts of the country incorporated into the Reich or Soviet Union and the inhabitants of Warsaw after the Warsaw Uprising; the existence of forced labour camps, German farms and companies as well as establishing the fate of missing persons.

To sum up, we should emphasise the fact that the specific nature of the state archives as both scholarly institutions and state offices results in specific relations between them and the archive users.

In the recent years we could see a definite change in the profile of the state archives in Poland. Before, though always officially described as state offices, those institutions used to have a definitely scholarly and research character, editing source materials, compiling and analysing archival material, collaborating with other scholarly institutions in the field of history, archivist studies or sciences auxiliary to history. Nowadays the archives' main activity concentrates on their official role. Of course, they render the files for use in scholarly research, give professional help to the archive users and analyse the files but the stress is certainly put on the administrative issues. This change is undoubtedly connected with the political changes in Poland after 1989.

So a questions may be asked what the state archives are today and which role they perform? Some information from the annual report by the head Director of the State Archives for the year 2005 will help us to answer the above asked question. Currently, the activity connected with the national archival collection is conducted by 4 archives of central character and 30 state archives. Apart from their

main headquarters, those archives possess 59 branches and 3 agencies. The statutory duties are performed by 1533 persons. Among the main staff members only 14 persons have the status of a scholar. The dominant group are archivists. At the end of 2005 there were 893 of them. The State Archives keep about 77 thousand archival collections and units constituting about 35 million inventory units which occupy above 246 thousand running metres of shelves. On the basis of the above mentioned annual report as well as the former reports by the Head Director of the State Archives we can trace the following regularity: the activities of administrative character, connected with the collecting, analysing and rendering the archival material for use take 85-90% of the working time of the state archive employees. The activities connected with culture, education and science in the broad sense of the terms - 10-15% of the working time.

On the basis of the information presented above the following conclusion can be made: the state archives, keeping a great majority of the national cultural heritage, at present are primarily administrative units, and only in a small degree scholarly or cultural institutions.

The above mentioned everyday necessity for the archivists to apply legal regulations, not only the Statute on national archival collection, but also other, very often complex statutes and regulations creates many problems. The first of them is the difficulty in the interpretation and proper application of the regulations in their work by the persons without legal education. The matters are not made easier by frequent changes in the regulations, which is characteristic for a country whose legal model is still being created as far as the issues which before, in the previous system were not dealt with by legislators or officials. I mean here all regulations connected with proprietary matters.

The problems or qualms connected with legal issues lead to questions of ethical nature. The lack of full, clear interpretation made by the supervising institution of legal regulations connected directly or indirectly with the duties performed by the state archives results in the necessity of making such interpretation by the archivists themselves. For obvious reasons, they are not prepared for such tasks. In some cases, especially atypical or more complex ones, the archivists may have doubts if they were solved in the best interest of the archive client, in accordance with all procedures and application of all legal regulations.