

Daria Nałęcz

Naczelna Dyrekcja Archiwów Państwowych
(Główna direkcija nacionalnih arhiva)
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Poljska

**ACCESS TO ARCHIVES AND HISTORICAL RESEARCH:
POLITICAL AND IDEOLOGICAL INFLUENCES
– POLISH EXPERIENCE
(in the light of the archival autonomy)**

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Izlaganje sa znanstvenog skupa

Prema Zakonu o arhivima arhivsko gradivo u Poljskoj dostupno je za korištenje trideset godina nakon nastanka, kao što je uobičajeno u mnogim zemljama, uz ograničenje da se time ne smiju povrijediti interesi države ili građana. Na temelju odluke nadležnog ministarstva gradivo je u određenim slučajevima moguće koristiti i prije isteka toga roka. Dozvolu za korištenje izdaje ravnatelj arhiva u kojemu se traženo gradivo čuva.

Pored pravnih propisa, na korištenje gradiva utječe i organizacija arhivskog sustava. U Poljskoj se mogu razlikovati četiri vrste državnih arhiva: državni arhivi neposredno podčinjeni glavnom ravnatelju državnih arhiva, državni arhivi na koje je glavni ravnatelj privremeno ili trajno prenio pravo da čuvaju arhivsko gradivo, izdvojeni arhivi kao što su arhivi Ministarstva unutarnjih poslova, Ministarstva obrane i Ministarstva vanjskih poslova, tekući arhivi pojedinih upravnih tijela i državnih poduzeća koji svoje gradivo predaju državnom arhivu 25 godina nakon nastanka.

Uvjeti korištenja gradiva u državnim arhivima pod nadležnošću Glavnoga ravnateljstva su isti za sve arhive i gradivo, osim gradiva koje sadrži osobne podatke i rijetkih povjerljivih dokumenata, gdje se interes korisnika sukobljava s načelom zaštite privatnosti i tajnosti podataka.

Korištenje gradiva tzv. "izdvojenih" arhiva regulirano je uredbama nadležnih ministara. Još uvijek su na snazi uredbe donijete za vrijeme komunističkog režima, ali su uvjeti korištenja znatno liberalizirani nakon 1989. godine, što je rezultat pritiška korisnika da im se omogući istraživanje. Do 1990. godine ovi su arhivi bili dostupni uglavnom istraživačima koji su bili povezani s državnim institucijama. Središnji vojni arhiv je nešto liberalniji od ostalih iz ove skupine: mnogi dokumenti su deklasificirani, a omogućen je i slobodan pristup obavijesnim pomagalicama. Arhiv Ministarstva vanjskih poslova do 1990. nije imao čitaonicu, gradivo nije bilo sređivano, a koristili su ga uglavnom suradnici ministarstva i ministarstvu poznati istraživači. Najteže dostupno bilo je gradivo Ministarstva unutarnjih poslova i Ureda za državnu sigurnost, čak i nakon promjena 1990. Tek je pritisak javnosti i istraživača omogućio postupnu liberalizaciju korištenja, dio gradiva je deklasificiran, otvorena je čitaonica, ali istraživači još uvijek ne mogu slobodno koristiti obavijesna pomagala. Dugotrajna rasprava o problemu dostupnosti gradiva bivših represivnih organa završena je 1999. godine donošenjem zakona o Institutu za nacionalnu memoriju, kojemu je povjereno prikupljanje arhivskoga gradiva nastalog djelovanjem represivnih organa. Institut je pod neposrednim nadzorom parlamenta.

Poljski zakon o arhivima omogućuje korištenje gradiva 30 godina nakon njegova nastanka, kao što je uobičajeno u većini europskih zemalja. U pozadini ovoga roka stoji pretpostavka da gradivo tada više nije potrebno stvaratelju te da se koristi isključivo za povijesna istraživanja. U vrijeme kada se smatralo da institucije vlasti nisu podložne demokratskom nadzoru od strane građana i institucija civilnog društva, rok od 30 godina je na neki način štitio institucije vlasti, omogućavajući korištenje gradiva za povijesna istraživanja nakon isteka toga roka. Međutim, u današnje vrijeme odnos između vlasti i građana se bitno mijenja. U demokratskom društvu građanima treba omogućiti uvid u tekuću dokumentaciju državnih službi i time u rad tih službi. Ovo pravo pristupa tekućem gradivu obično se uređuje posebnim zakonom o slobodi pristupa informacijama. Uz taj zakon, obično se donosi i zakon o zaštiti tajnih podataka, koji precizno određuje koje informacije i u kojem roku mogu biti označene povjerljivima.

Dostupnost tekućega gradiva važna je i zbog sve većeg interesa za proučavanje suvremene povijesti. Istraživači nisu spremni prihvatiti da im je nedostupno gradivo koje im je potrebno za rad na temi koja ih zanima. Poštivanje propisa koji im onemogućuju pristup gradivu oni smatraju namjernim prikrivanjem prošlosti, a u arhivistima vide odvjetnike "staroga režima." Za ravnotežu između interesa za zaštitom osobnih i povjerljivih podataka i interesa za slobodnim pristupom informacijama važno je da postoji primjeren pravni sustav, koji bi se trebao sastojati od: zakona o arhivima u kojemu su jasno definirana načela dostupnosti i zaštite informacija kada ne postoje drugi odgovarajući propisi, zakona o slobodi pristupa informacijama koji

osigurava slobodan pristup gradivu nastalome djelovanjem javne uprave na svim razinama, zakona o zaštiti tajnosti podataka u kojemu je precizno definirano što se smatra tajnim i u kojem roku. U Poljskoj za sada postoji samo zakon o zaštiti tajnosti informacija. O zakonu o slobodnom pristupu informacijama dugo se raspravlja, ali još nema rezultata. Taj će se nedostatak pokušati ublažiti novim zakonom o arhivima čiji je nacrt u izradi kroz odredbe o slobodnom pristupu informacijama, ako ta sloboda nije ograničena posebnim zakonom, kao što je zakon o zaštiti tajnosti podataka.

Sažetak izradio Jozo Ivanović

Legal acts define basic principles of accessibility to documents gathered in archives. In Poland, the act on the national archival holdings and archives, adopted in 1983, remains in force. It provides that archive materials are made accessible for the needs of science, culture, and economy in thirty years after their creation, with one reservation, however, mainly that this accessibility should not infringe legally protected interest of the State and of its citizens. The resolution of the Minister of Higher Education, Science and Technology, issued one year later (1984) on the strength of this act, allows for the earlier access to archive materials, i.e. before the termination of the 30-year period. The consent to use archive materials is granted by a director of state archives preserving records of interest within the holdings.

The access to archive materials is determined not only by applicable legal provisions and accompanying resolutions, but also by the organization of an archival system, and procedures partly included into the regulations of study rooms of individual archives, depending on the system of finding aids, and free or limited access to them.

The following four parts of the system of state archives in Poland may be distinguished:

1. state archives submitted directly to the General Director of State Archives, as to a central organ of the State in the field of archival problems;
2. state archives with entrusted holdings, i.e. archives authorized by the General Director of State Archives to preserve the holdings gathered on temporal or perpetual basis (for example the archives of the Central Office of Statistics, or of the Polish Academy of Sciences);
3. archives having the status of separate units, including the archives of the Ministry of Internal Affairs, Ministry of Defense, and Ministry of Foreign Affairs, the specific feature of which is that the functions of the General Director of Archives in respect to these archives are executed by applicable ministers, who also determine accessibility principles. Materials created by these ministries should be transfer-

red to state archives in 50 years after their creation. In practice, however, materials created after the World War II have not found their way to state archives yet;

4. archives of current records of individual offices, institutions, and state enterprises, which transfer the materials they gather to state archives in 25 years after their creation. The access to materials kept in these archives is determined by the managers of individual units, as these archive materials serve, first of all, the current needs of their authors.

In state archives submitted to the General Director and in archives with entrusted holdings the accessibility principles are similar. The holdings of these archives are of a historical character, thus being open to the needs of research work. This approach, however, is not unvocal with the opportunity of an unlimited access also for research workers. State archives keep records including information on citizens' personal lives, the availability of which might infringe their personal rights. The above refers for example to court files, personal files, or family archives, taken over after the war by communist authorities without the will of their owners. The dilemma between unrestricted studies and the protection of personal rights of persons, information on whom is included in records, arises the more frequently the closer researchers' interest approaches our times. It is so due to the fact that in a democratic society the awareness of individual rights in regard to the protection of one's own personal and family life increases, including the right to protect it by means of a legal course. Finally, though to a limited extent, these materials contain information defined as confidential. It refers mostly to records of a former communist party (Polish United Workers' Party) taken over to state archives after its liquidation.

Making materials accessible in so called separated archives comes under special regulations, defined in form of resolutions issued by applicable ministers, i.e. those that the archives are subordinated to. Although these regulations, adopted still under the communist regime, have not been changed so far, actual accessibility procedures followed today differ significantly from those observed before 1989. It is partly a result of the pressure brought by research workers who insisted on a free access to materials gathered in these archives, having been of an opinion that the knowledge of these materials would allow them to become better acquainted with the working mechanisms of the communist regime.

Accessibility conditions, however, were not the same in all separated archives. The Central Military Archives, submitted to the Ministry of Defense, enabled relatively the widest access to the holdings. Scientists could use them without any significant restrictions. After 1990, the access was allowed for research workers not associated with any military or state institution, a part of the holdings was declassified, free access to finding aids was enabled. The above doubled the number of users.

The archives of the Ministry of Foreign Affairs did not focus on external users until 1990. Those research workers who either had worked for the ministry before, or who were known to the ministry thanks to their publications, had an easier access to archive materials. It was not earlier than after 1990 when a study room was organized, and the work on arranging the holdings was initiated. As we may say, it has gradually become more and more acknowledged that these archives, despite the special status, constitute a part of the archival structure of a democratic state, and as such, should be fully open to research needs in observance of the specificity of problems related to the foreign policy of the State.

The archives of the Ministry of Internal Affairs and the archives of the State Security Bureau, separated in 1990, were the most inaccessible for research workers. Although these two institutions of the repression machinery of the communist regime after the year of 1990 underwent a radical reorganization, which was to adapt their functions to the needs of a democratic state, and a significant part of the former staff was changed, there was still the unsolved problem, strengthened within the walls of these institutions, of the awareness of a specific character of documents gathered there for years, i.e. of their highly confidential nature, and the feeling that they should not be revealed to the profane. This approach was accompanied by a deep conviction of a constant immediate interest of information included in the files, although sometimes they came from several decades before, and not all of them were marked as "classified". It was only after the pressure had been brought by research workers, and supported by the influence of the public opinion, in particular of the press, when these archives gradually began to open the door wide for all research workers, not only for those confidential ones. These changes found their reflection in declarations that materials were made accessible for research workers. A wide-scale action to declassify large portions of materials was initiated. Study rooms were organized. Still, however, a research worker has no free access to finding aids.

A need to square up with the communist past appeared together with political and systemic transformations that took place in 1989 in Poland. A conviction was developed about the right of the society to learn the truth about the means of repression used by the state regime against its citizens, about the necessity to disclose repression mechanisms, to create their scientific descriptions, and to fix them in memory to admonish future generations.

Heated and long-lasting discussions about problems related to the control of access to archives of former special services ended up in 1999 with the adoption of the act on the Institute of the National Memory, one of the goals of which is the acquisition of archive materials created by repressive institutions of the communist state, such as security services or police (*Civic Militia*). The establishment of a new institution which will take over files created by the communist regime until 1989,

kept to date in so called separated archives of the Ministry of Internal Affairs and the State Security Bureau, at the same time creating new, better conditions of their accessibility, submitted to social control to a much greater extent, constitutes the essence of this solution. The Parliament is to execute control over the activities of the Institute. The board of the Institute is appointed by both coalition and opposition parties. The President of the Institute must have the support of 3/5 of voters sitting in the Parliament, which practically means the support of all larger parties represented there. This new institution is, first of all, to provide the opportunity to all citizens wronged by the former regime, i.e. to those who suffered repression, to become acquainted with the materials gathered there. Besides, one of the main goals of the Institute's activity is also to make it possible to conduct scientific studies on the basis of materials of the repressive machinery. The act on the Institute aims at the reconciliation of scientific studies of the past with the protection of personal rights of individuals, whose often tragic stories were recorded, not always in a trustworthy manner, in the files of the former machinery of repression.

As it was mentioned before, the Polish act on archives provides for the accessibility of archive materials in 30 years after their creation. It is a norm adopted in many European countries. The introduction of this norm aimed, as it seems, at the loss of immediate interest of information included in the files, at considering it in historical terms only. At times when it was believed that the activity of state institutions was not submitted to the control of citizens, the adoption of this period by force of law ensured the access to archive materials after the end of this definite time limit for research workers, in particular for historians. In our times relations between the authorities and citizens have been changed. In democratic societies, known also as civic societies, the citizens' right to control on current basis the authorities acting on their behalf and with their mandate, is recognized as one of the basic norms. One of the forms of control is the possibility to become acquainted with documents currently created by offices, which refer not only directly to any individual citizen, but also to all public activities. This norm is written down in special acts that ensure citizens' access to information. These acts are usually accompanied by the other act on confidentiality that precisely defines which information may be classified, and for how long, which, in extreme cases, should not exceed 60 years.

Chronological limits of studies conducted on the basis of sources gathered in archives have also changed. The notion of a "contemporary history", formulated over a quarter of the century ago, constitutes the expression of this new approach towards research. The willingness to acquire knowledge based on sources of events witnessed by research workers themselves, justifies their requests to shorten the period of suspended access to records. It particularly refers to such states as Poland where deep systemic changes took place, and the censorship, to a certain extent defi-

ning the "forbidden areas" of research, was eradicated. The possibility to develop scientific studies is one of the manifestations of "settling accounts" with the communist period. These are the grounds for demands to get free access to all records created under the communist regime, especially those of former communist parties, no matter whether they refer to personal issues, or are marked as classified. Research workers do not want to acknowledge that some information is subject to further protection, and access to this information is possible only on the fulfillment of special procedures, related for example to the declassification of records. From this point of view, according to some research workers and politicians, the observance of the law in force is considered as identical with the conscious concealment of the past, and archivists are considered as advocates of the former regime. Thus, the archives are unintentionally involved into the turmoil of political discussions.

How can the freedom of access to archive materials be reconciled with the need to protect certain pieces of information? Obviously, by constructing an adequate legal system.

This system should consist of the following acts:

- the act on archives with clearly defined principles of access to information and protection of information, unless defined by other acts;
- the act on the citizens' access to information that ensures the access to information created by public administration on each level of its development;
- the act on confidentiality that should precisely define areas considered as secret, and define time limits for information to remain classified.

In the Polish legal system the above conditions are fulfilled only by the act on classified information, adopted in 1999. Proposals concerning the act on access to information raised several years ago have not found any further manifestation so far.

The draft of a new act, called the "Law on Archives", which is to adjust regulations pertaining to activities of archives to the new reality, also aims at facilitating the access to archive materials preserved within public holdings. The lack of the act on citizens' access to information constitutes a significant barrier on the way to adopt this law in its optimal formula, which eliminates any possible time restrictions to the accessibility of records, with the only exception of stipulations defined under other acts, such as the one on the protection of classified information. The adoption of these provisions, aimed at by the circles of archivists, would allow to implement in practice the requirements of a civic society, while the archives would be freed from occasional political and ideological pressures. The discussion on the new archival law, however, has just started.