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## THE SUCCESSION OF THE STATE ARCHIVES -TO INTEGRATE AND PRESERVE DISPLACED ARCHIVES

UDK 930.25:341.38

Izlaganje sa znanstvenog skupa

*U članku autor iznosi neka osnovna načela po kojima se u europskim zemljama još od srednjega vijeka, pa sve do 20. st., zbog promjena vlasnika nekog dobra ili zbog promjena državnih granica, obavljala sukcesija arhivskoga gradiva. Danas su to načela provenijencije ili podrijetla arhivskoga gradiva, funkcionalne pertinencije arhivskoga gradiva neophodno potrebnog za nastavak redovnog poslovanja administracije novih država. Treće važno načelo je da arhivsko gradivo u slučaju sukcesije ostaje zajednička baština, čuva se u jednom državnom arhivu, dok sve zainteresirane zemlje – nove države, imaju slobodan pristup korištenju toga gradiva. Na takav način se raspravlja i planira primjena ovih načela i u stručnim razgovorima arhivskih stručnjaka, kao i na međudržavnim pregovorima, u slučaju sukcesije državnog arhiva bivše SFRJ, koja je upravo u tijeku. Na kraju članka autor navodi i tekst Zajedničkog priopćenja sa sastanka direktora državnih arhiva zemalja sljednica bivše SFRJ, održanoga u Arhivu Jugoslavije u Beogradu 17. listopada 1997.*

*U tom Zajedničkom priopćenju direktori državnih arhiva zemalja sljednica bivše SFRJ izričito naglašavaju da "nemaju nikakvih suprotnih mišljenja", ponajprije o sljedeća tri temeljna arhivistička načela: 1. da je korištenje arhivskoga gradiva za sve građane zemalja sljednica jednako pod istim uvjetima, "prema zakonu i drugim arhivskim propisima", 2. da će se u pogledu arhivskoga gradiva bivše Jugoslavije primjenjivati načelo podrijetla tj. provenijencije, 3. da će se uz poštivanje načela provenijencije i načela cjelovitosti ("integriteta") fonda, izuzetno, u skladu s nače-*

*lom "funkcionalne pertinencije", raspraviti i pitanje izvornih dokumenata koji se odnose na zemlje sljednice i na njihovo djelovanje.*

*Konačno, na kraju Zajedničkog priopćenja u točki 4 kaže se da je "potrebno, što je prije moguće, izraditi pregled arhivskih fondova i stvaratelja arhivskoga gradiva federacije, bez obzira na kojem mjestu se to gradivo čuva". U posljednjoj, 5. točki Priopćenja izražava se stajalište direktorâ, prvenstveno kao arhivskih eksperata, da bi se rješavanje problema Državnog arhiva bivše Jugoslavije moglo ubrzati "ukoliko bi se izdvojilo od ostalih predmeta sukcesije" u cjelini, te da se elaboracija prijedloga rješenja tog pitanja povjeri državnim arhivima na osnovi međunarodne arhivske prakse i načela.*

From the times of the Middle Ages, displaced archives are always in danger not to be returned and the responsible archivists fear for them, for being alienated for a longer period of time. Archivists hope for the reintegration of the displaced archives, as well as for their preservation and security.<sup>1</sup>

In Europe, there is especially after World War I, as well as it was after World War II, the constant care and struggle to recuperate the displaced and disunited archives, in the first place the parts of the state archives, because of their importance and value for the politics and for the current administration, as well as for their general historical cultural value, being in the same time uninterrupted, continuous part of the cultural heritage of the states and of the nations.

As it was written, among many examples, also in UNESCO Documents, e.g. in the "Report of the Director-General on the study regarding problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin", in 1978, in Paris. Because of the complexity of the problem and

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<sup>1</sup> Robert-Henri Bautier, *Les archives et le droit international*, in *Les archives dans la vie internationale*, Actes de la sixième conférence internationale de la Table ronde des archives, Paris 1963, 11–56.:

"Medieval landlords have installed some places for keeping charters in order to maintain rights of ownership of their manors and to legalize their rights. The charters regarding kings and their big feudal vassals were kept at so-called 'vaults for charters'. During achievement of a new land by conquest, treaty, marriage or inheritance, they were not missing a chance to transfer a collection of charters of this land to 'vault of charters' of a land-gainer, so charters were accumulated as a possession was enlarged. A feudal possession as a legacy was transferring from father to son and state land and goods were transferring from one bearer of power to political successor. This fact was basis for the conception of 'the territorial nature of archives', which was – in various shapes – persisting as the basis of today's archival doctrine. The clearest and the most obvious example of such an archival policy was by all means given by French kings when Philip August in 1194 established his 'vault of charters'. The king inherited in 1271 the manor of his uncle Alphonse of Poitiers (in fact the whole southern part of France) and he sent to his 'vault of charters' in Paris archives of the Duke of Toulouse: namely, land-registry certificates, cartularies, censuses, and also registers of letters, polls and administrative bills".

See also: The sixth international conference of the round table on archives, *Arhivist*, 2, Beograd 1981, 118.

because of the diversity of similar but also of different and sometimes controversial proposals and offered solutions in above mentioned rather long history of international agreements between predecessor's state and of new states (or a state) – it can be quoted from this "Report of the Director General", for the moment only some general but still useful points, "universally accepted", as for instance, from the second chapter of this "Report", as follow:

## "II. ARCHIVES AND CULTURAL PROPERTY

Archives are universally recognized as an essential part of the heritage of every national community. Since they are indispensable in the development of national awareness and identity, they constitute a basic part of the cultural property of States."

This could be especially related on state archives, because of the historical and cultural values of the state archives or archival material. Also being an "essential and indispensable part of the heritage of every national community", are to be treated, of course, in the frames, first of all, of the generally accepted principle of provenance – meaning that the archives are to be returned "in integrity" to the place or to the places, to that territory, where they have been created, in fact to their **original territory**.

The second one archivistically, professionally "universally recognized" principle – dealing with succession issues is the principle of the functional pertinence.

This principle of the functional pertinence, is also clearly recognized in the second chapter of the "Report of the Director General" of UNESCO, wording, as follow:

At the same time, however, it must be recognized that archives have an official and legal status different from that of most types of cultural properties. Archives which were originally created to accomplish administrative transactions also serve as the evidence of those transactions. Both as evidence and because of the information they contain, they are indispensable for the continuing administration of all activities within the jurisdiction of the state. They do not only document the experience of the people, but they also record and safeguard the rights and interests of the government and of individual citizens. Archives thus constitute irreplaceable legal titles and evidence which is essential to guarantee continuity in the exercise of the functions incumbent on public authorities.

In the next chapter of the Director General's Report, in the "Statement of Principles and Guidelines", the three main principles in archival claims for succession of the state archives, are recognized and affirmed, namely:

1. The principle of the provenance, looked upon as "the respect for the integrity of archives groups" and that means also of "its legally designated successor". It means that the transferred or in any way taken off or "occupied" archives should be returned to the previous owner or to the original creator, to the administration that created them.

## 2. "Functional pertinence"

This principle is looked upon as "the only significant exception to the principle of provenance...". Namely, sometimes it is necessary not "to respect the integrity of archives" if we want to continue the normal procedure of the new State, of its administration:

".....This transfer of powers, responsibilities, and competencies to a new state must necessarily be accompanied by the transfer of titles, proofs and information which will render the exercise of these powers and responsibilities possible. With regard to archives, there must be a transfer of those which are functionally pertinent in order to provide administrative continuity for all parties concerned....".<sup>2</sup>

As another exception to the principle of provenance, as another example of principle of functional pertinence, in the succession of the state archives is the transfer of those archival units or archives groups that relate exclusively to the one of the successor states or to its territory, e.g. as documentation on borders of new states. It is especially possible when the internal structure of those archives enable us not to destroy the complete organic entity of the predecessor's archives groups.

## 3. "Joint heritage"

When federal states are dissolved or when the predecessor state is being dissolved, then some federal record groups remain as "print heritage", because it is difficult to be given or transferred to the successor state without destroying the integrity of the predecessor's archives groups:

"Where an archives group or a body of archives results from the activity of an administration where succession is shared between the predecessor state and two or more successor states – i.e. where the archives form a part of the heritage of two or more states but cannot be divided without destroying its juridical, administrative, and historical value – as a realistic solution recourse should be had to the concept of joint heritage. The practical result of the application of this concept is that the archives group is left physically intact in one of the countries concerned, where it is treated as part of the national heritage, with all the responsibilities with respect to the security and handling implied thereby for the state acting as the owner and custodian of that heritage. The states sharing this joint heritage should then be given rights equal to those of the custodian state".

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<sup>2</sup> Records of the General Conference, Eighteenth Session, Paris, 17 October to 23 November 1974 (4,212) Report of the Director-General on the study regarding problems involved in the transfer of documents from archives in the territory of certain countries to the country of their origin, 24–32. Reference dossier on archival claims, Strasbourg 1997; Leopold Auer, Restitution of Removed Records Following War, *Citra XXXI* 172–179; Henri Bastien, About archival claims, *Citra XXX*, 62–88, *CITRA* 1993–1995, Interdependence of Archives, Dordrecht 1998.

These three main principles of **PROVENANCE**, **FUNCTIONAL PERTINENCE** and of **JOINT HERITAGE** had been applied in the case of the implementation of the succession of the state archives of the former SFR Yugoslavia both in the officially so-called "Mini-agreement on State Archives...." and also of the text of the "Common Announcement" of the directors of the State Archives of the Successor States of the former SFRY.<sup>3</sup>

On the end of this paper we have enclosed this specific Common Announce as a example of different approaches to a concrete problem of succession of the State archives of the former SFRY.

All these texts have some common principles and procedures how to explain and how to implement an Agreement for the future, based on three basic archivistic, professional, intentionally recognized and acceptable principles, namely:

- a) Principle of provenance, with exceptions based on
- b) Principle of Territorial pertinence, and
- c) Principle, or intentionally possible practice, of Joint Heritage of State Archives.

Such texts, namely the Agreements on succession issues, necessarily, have to be legal texts, based on the theory and practice of the intentional law. On the other hand, the archivists are professionals, which understand and have also some knowledge of intentional practice, based on intentionally acknowledged archivistic principles, arisen from many centuries of the various possible implementations of agreements between the states about the issues of transfer of the archives, or on the issues of the succession of the state archives.

So, the text, here enclosed, is the result of the-work of the group of archivists, on the specific, concrete issue of the succession of the State archives of the former SFRY under the title "COMMON ANNOUNCEMENT FROM THE MEETING OF DIRECTORS OF THE STATE ARCHIVES OF THE SUCCESSORY STATES OF FORMER SFRY HELD ON OCTOBER 17th, 1997 IN THE ARCHIVES OF YUGOSLAVIA".

This text, it is obvious to see, is the result, much more a simple expression of the before mentioned and explained, basic, intentionally acceptable, archivistic principles, theoretically and in the intentional practice also acknowledged principles of provenance (see point 2 of this Common Announcement), and of functional pertinence as an exception to the principle of provenance and of the principle of archival

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<sup>3</sup> See the text of the Common Announcement from the meeting of directors of the state archives of the successors of former SFRY held on October 17<sup>th</sup>, 1997 in the Archives of Yugoslavia, enclosed on the end of this paper.

integrity /of archival or record groups or fonds) (see point 3 of this Common Announcement).

The concept or the principle of joint heritage, for those parts of state archives that are relating to all successor states and are difficult to apportionate them "in an equitable manner", as the whole fonds or record groups)- is not mentioned directly, in the text of this Common Announcement. Nevertheless it is obviously understood, that, if it is not possible, practically speaking, to apportionate all the relevant documents, archives or records, because- many of them are concerning all successor states, it is ultimately necessary, and probably even the greater part of all state archives of the federal agencies, are to stay on some place, to remain in c u s t o d y of o n e of the successor states. Part of those state archives remains within the custody of the State archives of the predecessor state, in .this specific case, at the State archives of the Federal Republic of Yugoslavia that is also, one of the successor States of former SFRY.

It is also very much important to be stressed upon, that in all previously mentioned texts, the generally accepted principle of the free access to the all concerned State archives, both of the former SFRY or, reciprocally, to the State Archives of all the successor States, is to be free and accessible for all researchers from all concerned states. This principle is directly written in all relevant texts and also in the "Common Announcement" (see point 1 of the Common Announcement).

On the end of the Common Announcement in point 4 and 5, two practical procedures are recommended just to accelerate as much as possible, final achievement of a certain, generally acceptable, future Agreement on the succession of the State archives of the former SFRY. Namely, to list all documentation, and to try to solve the problem of the succession of the state archives as soon as possible, in the frame of the international law, elaborating a specific agreement on the issue of the succession of the State archives of the former SFRY, "taken out from other items of succession" (see point 5 of the Common Announcement), in a certain, so-called "Mini – Agreement" on the succession issues of the State archives of the former SFRY.

#### Enclosure 1

#### COMMON ANNOUNCEMENT FROM THE MEETING OF DIRECTORS OF THE STATE ARCHIVES OF THE SUCCESORY STATES OF FORMER SFRY HELD ON OCTOBER 17, 1997 IN THE ARCHIVES OF YUGOSLAVIA

At the suggestion of Archives of Yugoslavia's director Jovan Popović, the meeting of directors of the state archives of the successor state archives of former Yugoslavia have been held today in Belgrade.

Directors of archives, respecting archival theory and practice and international archival principles, didn't have any opposite opinions on the following:

1. All the citizens of successor states of Yugoslavia would have access to archival material at the same conditions, based on the Law and other archival regulations. In respect of the access of the archival material for the needs of successor states the procedure terms could be shorter from those established in the Law.
2. In respect of archival material of former Yugoslavia the basic archival principle of provenance should be respected.
3. Respecting the principles of provenance and archival integrity, in accordance with principle of functional pertinence, we could, as an exception, discuss the question of original documents or groups of documents, relating to successor states and their work.
4. It is necessary, as soon as possible, to elaborate the archival review of record groups or fonds, and of the creators of archival material! of federation, without any regard of the place where they are kept.
5. The solution of the problem of the state archives of former Yugoslavia could be accelerated if it would be taken out from other items of succession, and elaboration of the proposal of the solution would be confided to the state archives, on the basis of international archival practice and principles.

From the Archives of Yugoslavia  
October 17<sup>th</sup>, 1997