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ARCHIVES VS. CREATORS. COOPERATION IN THE CREATION, PROTECTION AND ACQUISITION OF ARCHIVES

Abstract:

Cooperation between State Archives and creators of archives in the Slovak Republic is required by the Act nr. 395/2002 on Archives and Registries and on the Amendments of Certain Acts. Firstly, the creator has to cooperate with the competent State Archives in the process of elaborating Guidelines for the records management system and Schedule for retention and evaluation of records; the creator is also obliged to keep in touch with the Archives in the question of a regular disposal of registry records.

The State has the right (through the State Archives) to interfere with the creation, formation and protection of archives in the phase when they are still the property of the creator. In case of extinction of the company (creator) without a legal successor, the State (through State Archives) can acquire the complete and arranged archives, which were under the control of the State Archives in the registry records disposal procedure.

Categorization of creators in Slovakia allows the distinction of creators (companies) into those which „produce“ and those which “do not produce“ archives. It is the way how to influence the typologically and substantively the character of the future composition of the archival heritage of the Slovak Republic.

Key words:

creators, archives, categorization, acquisition, disposal procedure, cooperation

Izvleček:

Arhivi in ustvarjalci.

Sodelovanje pri ustvarjanju, varovanju in prevzemanju arhivskega gradiva

Sodelovanje med državnimi arhivi in ustvarjalci na Slovaškem določa Uredba št. 395/2002 o arhivih in ustvarjalcih. Ustvarjalec mora sodelovati s pristojnim državnim arhivom v postopku priprave navodil za upravljanje z dokumentacijo ter rokov hrambe in vrednotenja dokumentov. Ustvarjalec mora prav tako sodelovati z arhivom pri rednem izločanju in uničevanju dokumentarnega gradiva.

Država lahko (preko državnih arhivov) poseže v ustvarjanje, oblikovanje in varovanje arhivskega gradiva že v času, ko je ta še v lasti ustvarjalca. V primeru likvidacije podjetja (ustvarjalca) brez pravnega naslednika lahko država (preko državnega arhiva) prevzame celotno in urejeno arhivsko gradivo, ki je bilo v njeni pristojnosti med procesom izločanja dokumentarnega gradiva.

Kategorizacija ustvarjalcev na Slovaškem dopušča razločevanje med ustvarjalci (podjetji) na tiste, ki »ustvarjajo« arhivsko gradivo, in tiste, ki ga »ne ustvarjajo«. Na ta način vpliva na značaj bodoče sestave arhivske dediščine na Slovaškem.

Ključne besede:

ustvarjalci, kategorizacija, prevzem arhivskega gradiva, izločitveni postopek, sodelovanje

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1 ARCHIVES AND CREATORS

The relationship between the Archives on the one, and the creator and possessor of archives on the other hand, is defined by the Act on Archives and Registries and on the Amendments of Certain Acts, no. 395/2002 Collection. This Act defines rights and obligations of the creators of registry records and archives; rights and obligations of the possessors of archives and rights and obligations of the founders of the State or Private Archives. The Act also specifies the subjects of the Archives - Creator relation.

- Archives are a specialised workplace that acquires, registers, and processes archives
- Creator of archives is a legal or physical person producing records with archival value

The Ministry of the Interior through the State Archives executes the control over the compliance with the provisions of the Act. Archives in Slovakia are, according to the Act, divided into Public and Private Archives.

Public Archives are:

- State Central Archives and State Archives with regional territorial competence,
- Archives of state authorities, state budgetary organisations and state contributory organisations,
- Municipal Archives and the Archives of self-government regions,
- Archives of legal persons stipulated by law,
- Archives of legal persons and Archives of physical persons that represent public administration authorities.

Private Archives are

- archives of legal persons and Archives of physical persons.

The result of cooperation between the creators and State Archives is a well-functioning records management system, well-created and protected archives and archival fonds. The cooperation consists of four phases:

- 1) establishment of the creator,
- 2) approval of the records Schedule,
- 3) disposal procedure,
- 4) transfer of archives, purchase/sale of documents.

1.1 The establishment of the creator

Shortly after its „birth“, the legal person is obliged to ask the State Archives for classification into one of the three groups of creators (process of categorization). The task of the State Archives, Department of Pre-archival care is to evaluate the importance of the new creator and its potential for the creation and formation of registry records with a permanent documentary value for the history of Slovakia and Slovaks. After assessing certain criteria, the State Archives decides about the inclusion of the creator to one of the categories:

1.st category includes public authorities, local governments, public institutions, legal persons established by law and legal persons established by public authorities. The creators in this category produce the most important archives;

2.nd category includes entities established by the Ministry, e. i. business corporations, churches and religious communities, legal persons established by government producing records with a permanent documentary value;

3.rd category includes creators whose records have no archival value. These are mostly small business owners, entrepreneurs etc.¹

1.2 Approval of the records Schedule

Categorization brings some obligations for the creators of registry records, including the obligation to create a records Schedule and submit it to the State Central Archives or to the State Archives with regional territorial competence for approval. A registry creator, who is a public administration authority, a legal person established by a public administration authority, a legal person stipulated by law or a legal person and whose role is governed by law, is obliged to create also guidelines for registry administration. The elaboration of the registry records Schedule leads to making a decision on whose records have permanent documentary value and in the future, after the disposal procedure, will be transferred to the State Archives.

1.3 The disposal procedure

The third phase of the Archives - creator relation is the disposal procedure. According to the Act 395/2002 Coll. every creator is obliged to regularly dispose records but only upon approval given by the State Archives. The creator submits a list of records with expired retention periods for disposal. If any of the registry records with an expired retention period are still needed, the extension of the retention period can be discussed within the disposal procedure. The registry creator must not include registry records with an unexpired retention period into the recommendation for the disposal of registry records. In the disposal proposal, the registry creator includes two lists:

- a) a list of registry records subject groups proposed for transfer to the Archives,
- b) a list of registry records subject groups proposed for disposal.

The disposal procedure begins upon the presentation of a disposal proposal. If the disposal proposal complies with all requirements, the State Archives appraises the documentary value of registry records and makes a decision on

- a) the disposal of registry records after the expiry of their retention periods,
- b) the permanent documentary value of registry records and the date of their transfer to the Archives,
- c) whether the registry creator is allowed to arrange the destruction of registry records without permanent documentary value.

¹ Decree nr. 628/2002 of the Ministry of the Interior of the Slovak Republic by which certain provisions of the Act on Archives and Registries and on the Amendments of Certain Acts are executed, § 4.

After this procedure, archives are stored in the State Archives. If the creator does not establish its own archives, documents with archival value have to be stored separately from other registry records in the storage space. It is caused by problems with storages space of State Archives (Mišovič, 1999, 34). The State Archives retains the right and the obligation to control these documents. In the disposal procedure, State Archives have the option to reclassify records between categories and the creator is obliged to respect all changes. The task of Archives is to sensitively select, appraise and correctly assess the value of records submitted to the disposal procedure (Vrtel, 1992). The criteria that define the documentary value of the records is provided by the supplementary Decree nr. 628/2002 of the Ministry of the Interior of the Slovak Republic by which certain provisions of the Act on Archives and Registries and on the Amendments of Certain Acts are executed.² The criteria are mainly: content, importance of the creator, the period of the creation of the record, uniqueness, embodiment, credibility of the record, completeness of structured data etc.

In case of inadequate protection, lack of material, technical, spatial or personal provisions, the State Archives decides on the forced custody of archives. If the Ministry places a measure intended for the protection of archives on the possessor of archives, or on the founder of archives, after the termination of forced custody, which he did not fulfil, the Ministry is entitled to dispossess these archives. Archives are only dispossessed into the state proprietorship for a reasonable compensation, in an amount determined by an expert. The transfer of proprietorship and level of compensation forms an integral part of the statement of the decision on dispossession (Act on Archives, 2002, § 8).

1.4 The transfer of archives, purchase/sale of documents

The highlight of the cooperation between Archives and creators is the moment when the archives are transferred to the State Archives.

Mostly, we are speaking about permanent archival storage. In the case of state institutions, public administration institutions and ministries, the transfer the archives is usually executed after the disposal procedure or after the extinction of that institution.

Other creators transfer registry records with permanent documentary value to the State Archives after their extinction without a legal successor. In practice, it is one of the main obligations of private or legal entities - to ensure the storage of registry records and archives (Act on Archives, 2002, § 16). Archives are transferred to the State Archives by a liquidator, bankruptcy administrator or other authorized person. The cost, related to the transfer to the Archives after the completion of the disposal procedure, is covered by the registry creator. Archives acquire archives from the registry creator, together with finding aids, according to guidelines for registry administration. Archives are allowed to refuse the acquisition of archives, if these are not arranged according to the records schedule of the registry creator or when documents are not stored in special archival boxes. It also specifies a period for the arrangement of archives.

In addition to cooperation with the creator of archives, the State Archives has to solve the cooperation with the possessors of the archives. In contrast to the creator,

² Decree nr. 628/2002 of the Ministry of the Interior of the Slovak Republic by which certain provisions of the Act on Archives and Registries and on the Amendments of Certain Acts are executed, §1 - 8.

the possessor is not necessarily also the creator of records and archives. Archives can be transferred to the private ownership in different ways: inheritance, purchase, disregarding of the right of pre-emption first refusal of the state etc. These private archives are, with other archives, a part of the archival heritage of the Slovak Republic and in the broader context a part of the Cultural Heritage of the Slovak Republic. It is in the interest of the State Archives to register and repurchase these documents. The State Archives, in accordance with the ownership rights, determines the rights and obligations of the possessor of such documents.

The possessor of archives is entitled:

- to use information, advisory and expert-methodological services provided by the Ministry,
- to ask the Ministry for a financial contribution intended for the protection of archives,
- to ask the Ministry for the provision of the conservation or restoration of archives, whilst the possessor of archives bears the cost incurred for the conservation or restoration,
- to transfer the proprietorship of archives within the territory of the Slovak Republic, provided that the state did not exercise its right for pre-emption. If it concerns foreign archives, it may also transfer the proprietorship outside the territory of the Slovak Republic.

The possessor of archives is obliged:

- to submit the archives to the State Archives pursuant for their recording into the Archival Heritage Register,
- to provide the protection of archives, especially their conservation or restoration, if required by their physical state,
- to allow the execution of professional state supervision and to provide for any necessary collaboration,
- to permit the forced custody of archives, for the necessary time,
- to offer the archives to the Ministry in accordance with its right of pre-emption or for contracted custody, provided that he is not capable of providing their protection, whilst a price proposal forms an integral part of the offer,
- to inform the State Archives recording the archives, of any change of their possessor or holder, change in the place of their location, their loss, theft, repossession, damage or destruction;
- upon the transfer of proprietorship to archives, to inform the new possessor about restrictions on their permanent removal. (Act on Archives, 2002, § 8)

The cooperation between the State Archives and the possessor of documents is carried out mainly at the level of the sale (purchase) of archives. Since the State Archives in Slovakia have no legal personality and their own resources, acquisitions are financed from the budget of the Ministry. Each State Archives has established a committee of archivists. The general public can offer archives for the purchase (sale) to this committee.

The committee evaluates the condition, character and value of documents. The value is determined by several criteria, for example: binding of a document to a

specific region, importance of the company or importance of the possessor of the document. The committee also appraises the visual design and content of the document. Members of the committee evaluate the offer and recommend / do not recommend the purchase of documents. Committee also proposes the price for the documents. In practice, the Archives face exaggerated financial claims of the sellers. Oftenthe seller is not satisfied with the offered price, but the Archives cannot offer more. The state's right of pre-emption expires in that moment. Documents remain in the evidence of archival heritage, but can be sold to everyone. However, t possessor has to inform the State to whom the document was sold (Act on Archives, 2002, § 3).

Less frequent form of cooperation between State Archives and the possessors of documents is offering archives to the Archives for free. This way of complementarity of archival heritage of the Slovak Republic is most often realized through donations. This way the State acquires fragments of archival fonds, collections and documents of important people from public life.

2 CONCLUSION

Cooperation between the State Archives and creators and possessor of archives seems to be a very good way of creating high quality and valuable content of Archival Heritage of the Slovak Republic. Close cooperation, support and advice from the Archives' side helps creating high-quality documents also in private Archives. The cooperation is bilaterally advantageous. Free services, methodological help, consulting and education of creators of archives, as well as requiring compliance with the law and regulations, helps to keep high quality registry administration and also helps to create good conditions for the formation and protection of archives. The benefit for State Archives is the possibility to directly influence the formation of interesting, valuable and historically consumable archival fonds.

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POVZETEK

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ARHIVI IN USTVARJALCI. SODELOVANJE PRI USTVARJANJU, VAROVANJU IN PREVZEMANJU ARHIVSKEGA GRADIVA

Odnose med Arhivi na eni in ustvarjalci in lastniki arhivskega gradiva na drugi strani ureja Uredba o arhivih in ustvarjalcih št. 395/2002. Uredba določa pravice in dolžnosti ustvarjalcev dokumentarnega in arhivskega gradiva, pravice in dolžnosti lastnikov arhivskega gradiva ter pravice in dolžnosti ustanoviteljev državnih ali zasebnih arhivov. Uredba prav tako določa odnos med arhivom in ustvarjalcem. Prispevek obravnava tri nivoje tega odnosa.

Prvi nivo je vrednotenje pomembnosti novega ustvarjalca in njegov potencial za ustvarjanje dokumentarnega gradiva s trajno vrednostjo za zgodovino Slovaške in Slovakov. Po vrednotenju po kriterijih odloči državni arhiv o vključitvi ustvarjalca v eno izmed treh kategorij. Kategorizacija ustvarjalca prinaša zanj določene dolžnosti, med njimi tudi obvezno pripravo klasifikacijskega načrta, ki ga predložijo osrednjemu državnemu arhivu ali državnemu arhivu z regionalno pristojnostjo v odobritev (drugi nivo sodelovanja).

Tretji nivo odnosa med arhivom in ustvarjalcem predstavlja izločitveni postopek. Glede na uredbo mora vsak ustvarjalec, po odobritvi s strani državnega arhiva, redno izločati dokumentarno gradivo. Ustvarjalec arhivu predloži seznam dokumentarnega gradiva, ki so mu potekli roki hrambe. Med tem procesom ima državni arhiv možnost preklasificirati določene kategorije gradiva, ustvarjalec pa mora te spremembe upoštevati. Po tem postopku ustvarjalec arhivsko gradivo shrani v arhiv. Če ustvarjalec nima lastnega arhiva, mora biti arhivsko gradivo ločeno od dokumentarnega v prostoru za hrambo.

Vrh sodelovanja med arhivom in ustvarjalcev pa predstavlja trenutek predaje arhivskega gradiva v državni arhiv. V večini primerov gre za trajno arhivsko hrambo. V primeru državnih institucij, javne uprave in ministrstev se predaja arhivskega gradiva izvede takoj po izločitvenem postopku ali po ukinitvi institucije. Drugi ustvarjalci predajajo arhivsko gradivo po njihovi ukinitvi brez pravnega naslednika.

Državni arhivi morajo sodelovati ne samo z ustvarjalci arhivskega gradiva, temveč tudi z lastniki arhivskega gradiva. Lastnik arhivskega gradiva ni nujno tudi njegov ustvarjalec. Arhivsko gradivo pride v zasebno lastništvo na različne načine: z dediščino, nakupom, neupoštevanjem predkupne pravice ali z odklonitvijo le-te s strani države itd. Takšno arhivsko gradivo je prav tako arhivska dediščina Slovaške republike.

Sodelovanje med državnimi arhivi in lastniki gradiva se običajno izvaja na nivoju nakupa (prodaje) arhivskega gradiva. Ker državni arhivi na Slovaškem niso pravne osebe in nimajo svojih sredstev, financira odkupe ministrstvo. Vsak državni arhiv je

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ustanovil komisijo, ki jo sestavljajo arhivisti. Tej komisiji lahko vsakdo ponudi arhivsko gradivo v nakup.

Sodelovanje med državnimi arhivi in ustvarjalci ter državnimi arhivi in lastniki arhivskega gradiva je dober način ustvarjanja kakovostne in pomembne vsebine arhivske dediščine Slovaške. Sodelovanje je tudi obojestransko koristno. Brezplačne storitve, strokovna pomoč, svetovanje in usposabljanje ustvarjalcev kot tudi spoštovanje zakonodaje in predpisov s strani ustvarjalca omogočajo visoko kakovost administracije in dobre pogoje za ustvarjanje in varovanje arhivskega gradiva. Državni arhivi pa imajo možnost neposrednega vpliva na ustvarjanje zanimivih, vrednih in zgodovinsko pomembnih arhivskih fondov.