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PUBLIC RECORDS AND ARCHIVAL RECORDS OF PRIVATE LEGAL ENTITIES IN THE LEGISLATION OF THE REPUBLIC OF SRPSKA

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Abstract:

We consider archival records of private legal entities to be a problem to which we should pay special attention, especially due to the long-standing process of privatization of companies. Even without the privatization process, archival records of private legal entities deserve special attention, because, due to the legal status of the creator, we may not see the value of some records. That is why it is extremely important to follow legal regulations on the records of private legal entities.

In the context of legal obligations, records of private legal entities are primarily dealt with by the Law on Archivesl (Official Gazette of the RS, no. 119/08), and the Instruction on the Content and Method of Keeping Records of Privately Owned Public Records (Official Gazette of the RS, no. 132/11). In addition, some provisions from the Regulations on the procedure for scheduling, criteria and appraisal of archival records (Official Gazette of the RS, number 43/10), the Regulations on general and special conditions for the preservation of public archival records (Official Gazette of the RS, no. 53/10) and the Regulations on the categorization of archival fonds and collections (Official Gazette of the RS, no. 53/10), refer to archival records of private legal entities.

The paper will show the definitions of public records and archival records of private legal entities, then their status, the obligations of their custodians and creators, the way in which competent archives acquire private records, the obligations of custodians of public records and archival records created by privatized legal entities, and the obligations of the competent Archives towards those archival records.

Keywords:

records management, Law on Archives, public records, Regulations, private legal entities

Izvleček:

Javno dokumentarno in arhivsko gradivo zasebnih pravnih oseb v zakonodaji Republike Srbske

Arhivsko gradivo zasebnih pravnih oseb obravnavamo kot vprašanje, ki mu moramo posvetiti posebno pozornost, predvsem zaradi dolgotrajnega procesa privatizacije podjetij. A četudi te procese odmislimo, si arhivsko gradivo zasebnih pravnih oseb zasluži posebno pozornost, saj zaradi pravnega statusa ustvarjalca morda ne prepoznamo vedno vrednosti nekaterih dokumentov. Zato je izredno pomembno, da upoštevamo zakonske predpise o arhivskem gradivu zasebnih pravnih oseb.

V okviru zakonskih obveznosti urejata arhivsko gradivo zasebnih pravnih oseb predvsem Zakon o arhivih (Uradni list RS, št. 119/08) in Navodila o vsebini in načinu vodenja arhivskih dokumentov v zasebni lasti (Uradni list RS, št. 132/11). Poleg tega se na arhivske zapise zasebnih pravnih oseb nanašajo tudi nekatere določbe iz Pravilnika o postopku razvrščanja, merilih in vrednotenju arhivskega gradiva (Uradni list RS, št. 43/10), Pravilnika o splošnih in posebnih pogojih za ohranjanje javnega arhivskega gradiva (Uradni list RS, št. 53/10) ter Pravilnika o kategorizaciji arhivskih skladov in zbirk (Uradni list RS, št. 53/10).

Avtorica bo predstavila opredelitve javnega dokumentarnega gradiva in arhivskih dokumentov zasebnih pravnih oseb, nato pa njihov status, obveznosti njihovih skrbnikov in ustvarjalcev, način, na katerega pristojni arhivi pridobivajo zasebne dokumente, obveznosti skrbnikov javnih dokumentov in arhivskih dokumentov, nastalih v okviru dejavnosti privatiziranih pravnih oseb, in obveznosti pristojnih arhivov v zvezi s temi arhivskimi dokumenti.

Ključne besede:

upravljanje dokumentov, Zakon o arhivih, javni dokumenti, Pravila, zasebne pravne osebe

1 Public records and archival mate records rials of private legal entities in the legislation of the Republic of Srpska

We consider archival records of private legal entities to be an issue that we need to pay special attention, especially because of the now long-standing process of privatization of companies. Of course, even without the privatization process, archival records of private legal entities deserve special attention, because, due to the legal status of the creator, we may not notice the value of some records. Therefore, it is extremely important to follow legal regulations on the records of private legal entities.

In the context of legal obligations, records of private legal entities are primarily dealt with by the Law on Archives (Official Gazette of the Republic of Srpska, no. 119/08), and the Instruction on the Content and Method of Keeping Records of Privately Owned Public Records (Official Gazette of the Republic of Srpska, no. 132/11).

I have to mention that my personal dilemma was whether it was correct to call public records, i.e. potential archival materials in the making with private legal entities, as archival materials. However, the law and regulations that I will discuss do not define this clearly, because both terms are used.

2 Public records and archival records of private legal entities

Archival records are of interest to the Republic of Srpska and, as cultural heritage, enjoy its protection in accordance with the regulations in the field of protection of cultural heritage. Public records and archival records are protected regardless of who owns or possesses them, and whether they are registered or recorded. Therefore, in legislation of the Republic of Srpska, the custodians and creators of records and the custodians and creators of archival materials have equal obligations, regardless of whether they are a public institution or a private legal entity.

Public archival records are records that were created or are in creation through the activities and work of the Republic's legislative, executive and judicial bodies, bodies of local self-government units, companies and other legal and natural persons performing public service or exercising public authority.

Public archival records are selected from public records according to the professional instructions of the competent archives. This is regulated by the Rulebook

on the procedure for selecting archival records, criteria and method of their appraisal (Official Gazette of the Republic of Srpska, no. 43/10). In fact, this would mean that records that do not have a limited retention period represents public archival records. I do not agree with that, because records have a "permanent" or long-term period for several reasons and do not automatically represent archival records. Appraisal is performed only by the competent archival institution. Public archival records are submitted to the competent archives within a period that cannot be longer than 30 years from their creation, unless otherwise is prescribed by law. Of course, this would be in some ideal conditions, but storage capacities in the Archives of the Republic of Srpska have long been filled.

Private records are records that were created through the activities and work of: legal and natural persons in: business companies, banks, savings banks, insurance companies, trade unions, citizens' associations, political parties, cooperatives and independent craft, trade and catering establishments, provided that they were not created through the performance of public service and are not state-owned; and through the work of natural persons in the scientific, cultural, artistic and professional fields, as well as records created through their engagement that has public significance, and their personal documentation and records of religious communities.

The provisions of the law relating to public archival records applies to the creators and custodians of private archival records or individual records of lasting value.

Instruction on the Content and Method of Keeping Records of Privately Owned Public Records (Official Gazette of the Republic of Srpska, no. 132/11) prescribes the content, method of keeping and deadlines for entering data relevant to keeping a register of private records that are presumed to have the status of archival records, certain areas in which privately owned archival material is created, and the responsibilities of the archives for these areas. Private records that are presumed to have the status of private archival records are any records older than 30 years. The Archives of the Republika Srpska keeps records of private records that are presumed to have the status of archival records, and that were created through the activities and work of: legal entities that provide activities throughout the territory of the Republic of Srpska, and natural persons in the scientific, cultural, artistic and professional fields, provided that their activities and work are of importance to the Republic of Srpska.

In the archival legislation, the Instruction on the Content and Method of Keeping Records of Privately Owned Public Records, it is stipulated that the archives of local self-government units keep records of private legal entities that are assumed to have the character of archival material created by legal and natural persons, provided that their activities and work are of particular importance for a particular local self-government unit. These provisions have not been implemented, because there are no independent archival institutions at the local self-government level, but only archives in municipal and city administrations as part of institutions.

3 Obligations of creators and custodians of public records and archival records of private legal entities

Given that both private and public archival materials in physical form have the same status, the obligations of their custodians and creators are equal, as prescribed by the Regulation on general and special conditions for the preservation of public archival materials (Official Gazette of the Republic of Srpska, no. 53/10). Ceators and custodians of private archival materials are obliged to:

- inform the competent archives of the possession of the records,
- take measures for the protection, preservation, arrangement, selection, recording, conservation and restoration of records and to act according to the professional instructions of the competent archives regarding these measures,
- submit data for the records kept by the archives to the competent archives,
- inform the competent archives of all legal and physical changes related to the records,
- enable the competent archives to have access to archival materials and, if necessary, to make protective recordings of them, and
- determine the conditions for their use.

If the custodians of private archival materials is unable to arrange and list them,they are obliged to allow the competent archives to do so at its own expense. Article 51 of the Law on Archival of the Republic of Srpska prescribes the obligations of the custodian of private archival materials.

The custodians who keep private archival material in digital form, or public archival material until it is handed over to the competent archives, is obliged to submit, at the request of the competent archives, data on the method and procedure for its protection, and in particular on:

- the equipment and means used,
- the forms and media of records used,
- the method of ensuring permanent availability of data,
- the planned and implemented conversion into other forms of records or transfer to other media of records, and
- the method of ensuring the integrity, authenticity and usability of the records.

4 How to acquire public archival records?

The Law on Archives of the Republic of Srpska prescribes the manner in which the competent archives acquire archival materials. Primarily, by taking over public archival materials in accordance with the law. When it comes to private archival materials, this is done through onerous or lucrative legal transactions such as purchase, gift, bequest, and the Archives of the Republic of Srpska has the right of pre-emption to purchase privately owned archival materials. And, which is the most common case, by taking over private archival materials for safekeeping. An example of private archival materials at the Archives of the Republic of Srpska are public records from private higher education institutions, like: College of Entrepreneurship and Business Prijedor (2006–2011); 1999/2008; vol. 3; f. 286 (student files), College of Primus, College of Prometej, Itep, etc.

Unfortunately, we also have taken over fonds without any value for science, culture, etc., such as smaller commercial or catering businesses, for example "Din Trade" DOO, Banjaluka (1992–2012); 1992–2012**;** 2 boxes**.** The value of this fonds is solely in helping to realize the right to pension for former workers.

The Archives of the Republic of Srpska has the right of pre-emption to purchase records and archival materials of private legal enities, which it may transfer to the archives of the local self-government unit in whose territory the headquarters or residence of the owner of the archival materials that are the subject of the sale is located (Law on Archives of the Republic of Srpska, Article 56, Official Gazette of the Republic of Srpska, no. 119/08). The owner of private archival materials is obliged to state the price and terms of sale in a written offer for the sale of private archival materials to the Archives of the Republic of Srpska. In the event of non-acceptance of the offer, the owner may sell the private archival materials to another legal or natural person at a price not lower than the price stated in the offer to the Archives of the Republic of Srpska and under conditions that are in no way more favorable to the buyer than the conditions contained in that offer. If the owner of private archival materials acts contrary to the provisions of this Article, the Archives of the Republic of Srpska has the right to sue the owner and the buyer to demand the annulment of the purchase and sale contract, no later than within five years from the date of its conclusion.

According to the Law on Archives of the Republic of Srpska, private companies and other legal entities established through privatization, which were socially or state-owned until privatization, may retain archival materials that they have acquired through privatization and that they need in carrying out their activities for a maximum of ten years from the date of privatization (Law on Archives of the Republic of Srpska, Article 102, Official Gazette of the Republic of Srpska, no. 119/08). The mentioned legal entities are obliged to secure these records from destruction and damage, and to hand them over to the competent archives, selected, arranged, recorded and technically equipped, after the expiration of the established deadline. If the archives is unable to take over these public records, the custodians are obliged to keep them in an arranged condition until they are handed over to the competent archives. For example, the company MTEL provided us with microfilm materials relating to the period before privatization, microfilmed records from the "Telekom Srpske" JODP Banjaluka fund (1997–2007); 1997/2007; microfilm roll 344.

The Law on Archives of the Republic od Srpska states in Article 50 that private records are records that were created through the activities and work of legal and natural persons, provided that they were not created through the performance of the public service and are not state-owned. The competent archives records these records in private ownership, which are assumed to have the status of archival material. The aforementioned records become archival material based on the decision of the competent archives. The provisions of the Law relating to public archival material apply to the creators and custodians of private archival material or individual records of permanent value, unless otherwise provided by the Law. If, during professional supervision, there is suspicion that the holder of private archival material is not handling it in accordance with the aforementioned Article 50 and Article 51, the director of the competent archives issues a decision ordering the custodian of private archival material to hand over the material for safekeeping to the competent archives, where it remains until the custodian proves that he has acted in accordance with the decision and that he meets the conditions for the preservation of private archival material.

The custodians of private archival material may store, donate, bequeath or sell the archival material to the competent archives. Private archival material that comes into the

possession of the competent archives through storage, gift or purchase is available for use under the conditions and in the manner that applies to public archival material. If private archival material is placed in the competent archives for safekeeping (deposit) at the custodian's request, it remains in private ownership, and special conditions for storage, protection and provision for use may be established by contract. As an example of such a case, I can cite the fonds of the private legal entity "Triglav osiguranje" a.d. Banja Luka, whose records are stored in the depot of the Archives of the Republic of Srpska. Also, the Archives of the Republic of Srpska is the depositor of the public records and archival material of the Notary Chamber of the Republic of Srpska. Private archival materials that are taken over for safekeeping by the competent archives at the custodian's proposal remain in private ownership and are handled in accordance with the storage contract.

The Archives of the Republic of Srpska keeps records of privately owned documenation that is presumed to have the characteristics of archival material, and was created through the activities and work of:

- legal entities that carry out activities throughout the territory of the Republic of Srpska, and
- natural persons in the scientific, cultural, artistic and professional fields, provided that their activities and work are of importance to the Republic of Srpska.

Private archival material may not be imported or transported from abroad without an export certificate from the country from which the archival material is being exported. The custodian of private records, which is presumed to have the status of archival material, regardless of whether it is entered in the register, may export it temporarily or permanently only on the basis of the approval of the Archives of the Republic of Srpska, which is issued at the request of the custodian of the private archival material. In the case of permanent export of private archival material, its owner is obliged to enable the competent archive to copy it. The Archives of the Republic of Srpska prepares a list of private archival material which, due to its special importance for science and culture, is prohibited from being permanently exported abroad.

Private records become archival material based on the decision of the Director of the Archives of the Republic of Srpska.

5 SOURCES AND LITERATURE

Law on Archives. (2008). Official Gazette of the Republic of Srpska, no. 119/08.

Instruction on the Content and Method of Keeping Records of Privately Owned Public Records (2011) Official Gazette of the Republic of Srpska, no. 132/11.

Rulebook on the procedure for selecting archival material, criteria and method of its valorization (2010) Official Gazette of the Republic of Srpska, no. 43/10.

Regulation on general and special conditions for the preservation of public archival materials (2010) Official Gazette of the Republic of Srpska, no. 53/10.

POVZETEK

JAVNO DOKUMENTARNO IN ARHIVSKO GRADIVO ZASEBNIH PRAVNIH OSEB V ZAKONODAJI REPUBLIKE SRBSKE

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V okviru zakonskih obveznosti se arhivsko gradivo zasebnih pravnih oseb ureja predvsem z Zakonom o arhivih (Uradni list Republike Srbske, št. 119/08) in Navodili o vsebini in načinu vodenja arhivskega gradiva v zasebni lasti (Uradni list Republike Srbske, št. 132/11).

Javno arhivsko gradivo pomeni arhivsko gradivo, ki je nastalo ali nastaja v okviru dejavnosti in dela zakonodajnih, izvršilnih in sodnih organov republike, organov enot lokalne samouprave, podjetij ter drugih pravnih in fizičnih oseb, ki opravljajo javno službo ali izvršujejo javno oblast. Odbrano je iz dokumentarnega gradiva v skladu s strokovnimi navodili pristojnega arhiva. To ureja Pravilnik o postopku izbire arhivskega gradiva, merilih in načinu njegove valorizacije (Uradni list Republike Srbske, št. 43/10).

Zasebni arhivski dokumenti so dokumenti, ki so nastali: a.) v okviru dejavnosti in dela pravnih in fizičnih oseb v gospodarskih družbah, bankah, hranilnicah, zavarovalnicah, sindikatih, državljanskih združenjih, političnih strankah, zadrugah in samostojnih obrtnih, trgovskih ter gostinskih obratih, pod pogojem, da niso nastali pri opravljanju javne službe in niso v državni lasti; ter b.) v okviru dela fizičnih oseb na znanstvenem, kulturnem, umetniškem in strokovnem področju, pa tudi dokumenti, nastali v okviru njihovega delovanja, ki ima javni pomen, ter njihova osebna dokumentacija in dokumenti verskih skupnosti.

Arhiv Republike Srbske hrani gradivo iz zasebnih zbirk, za katerega se domneva, da ima status arhivskega gradiva, in ki je nastalo v okviru dejavnosti in dela: pravnih oseb, ki delujejo na celotnem ozemlju Republike Srbske, ter posameznikov na znanstvenem, kulturnem, umetniškem in strokovnem področju, pod pogojem, da so njihove dejavnosti in delo pomembni za Republiko Srbsko. Glede na to, da imata tako zasebno kot javno arhivsko gradivo v fizični obliki enak status, so obveznosti njunih skrbnikov in ustvarjalcev enake, kot to predpisuje Uredba o splošnih in posebnih pogojih za hrambo javnega arhivskega gradiva (Uradni list Republike Srbske, št. 53/10). V skladu z Zakonom o arhivih Republike Srbske lahko zasebna podjetja in druge pravne osebe, ustanovljene v okviru privatizacije (ki so bile pred privatizacijo v družbeni ali državni lasti), hranijo arhivsko gradivo, pridobljeno v okviru privatizacije in potrebno za izvajanje njihovih dejavnosti, največ deset let od datuma privatizacije (Zakon o arhivih Republike Srbske, člen 102, Uradni list Republike Srbske, št. 119/08). Zgoraj navedene pravne osebe morajo to gradivo zaščititi pred uničenjem in poškodbami ter ga po izteku določenega roka predati pristojnemu arhivu, ki mora biti ustrezno organiziran, registriran in tehnično opremljen. Zasebni dokumenti postanejo arhivsko gradivo na podlagi sklepa direktorja Arhiva Republike Srbske.

About the author:

Marijana Todorović Bilić, MSc, was born on October 26, 1981, in Banja Luka, where she completed primary and secondary school. She graduated in history from the Faculty of Philosophy in Banja Luka in 2007. At the same Faculty, she also completed postgraduate studies (major: History of Yugoslavia) in 2015, defending her master's thesis Information and Propaganda in the Bosnian Krajina (1929–1953). She worked as a radio host, program organizer and was the author of several shows from 1998-2011. and was a correspondent for media houses abroad. She participated in numerous educations in the field of media and journalism. Since 2012, she has been employed at the Archives of the Republic of Srpska in Banja Luka, as a archivist. She completed three cycles of the "Autumn Archival School" of the International Institute for Archival Studies in Trieste and Maribor. She is a member of the editorial board of the magazine "Glasnik" of the Association of Archive Workers of the Republic of Srpska, and she was a member of the editorial board of "Topola", the magazine of the Donja Gradina Memorial District. She is a member of the Steering comitee of the Association of Archive Workers of the Republic of Srpska and the Archivist Association of Bosnia and Herzegovina. She is the president of the Commission for passing the professional exam for records managers and a member of the Commission for taking the professional archival exam and recognizing professional archival titles. She was a participant in many professional conferences, as well as an organizer of seminars and a lecturer in the field of records management. She is the co-author of the exhibition and catalog "Banjaluka - occupation and liberation". One of the organizers of the critical edition of Žarko Lastrić's memoir "Banjalučki Illegalac: Memories of Žarko Lastrić" in 2020. She is the author of the exhibition "Propaganda in Banja Luka and its surroundings during the Second World War" from 2021. Also, she is author of over twenty professional and scientific articles.

O avtorici:

Mag. Marijana Todorović Bilić se je rodila 26. oktobra 1981 v Banjaluki, kjer je končala osnovno in srednjo šolo. Leta 2007 je diplomirala iz zgodovine na Filozofski fakulteti v Banjaluki. Na isti fakulteti je leta 2015 zaključila podiplomski študij (smer: Zgodovina Jugoslavije), kjer je zagovarjala magistrsko nalogo Informiranje in propaganda v Bosanski Krajini (1929–1953). Delala je kot radijska voditeljica, urednica programa in avtorica več oddaj od leta 1998 do 2011 ter kot dopisnica za medije v tujini. Sodelovala je na številnih izobraževanjih s področja medijev in novinarstva. Od leta 2012 je zaposlena v Arhivu Republike Srbske v Banjaluki kot arhivistka. Zaključila je tri cikle Jesenske arhivske šole Mednarodnega inštituta arhivskih znanosti Trst - Maribor. Je članica uredniškega odbora revije Glasnik, ki ga izdaja Združenje arhivskih delavcev Republike Srbske, bila je tudi članica uredniškega odbora revije Spominskega območja Donja Gradina »Topola«. Je članica upravnega odbora Združenja arhivskih delavcev Republike Srbske in Arhivskega združenja Bosne in Hercegovine. Prav tako je predsednica komisije za opravljanje strokovnega izpita za upravljanje z dokumentarnim gradivom ter članica komisije za opravljanje strokovnega arhivskega izpita ter priznavanje strokovnih arhivskih nazivov. Sodelovala je na številnih strokovnih konferencah, prav tako organizirala seminarje in predavala na področju upravljanja z dokumentarnim gradivom. Je soavtorica razstave in kataloga »Banjaluka – okupacija in osvoboditev«. Sodelovala je pri kritični izdaji spominov »Banjaluški ilegalec: spomini Žarka Lastrića« leta 2020. Je avtorica razstave »Propaganda v Banjaluki in njeni okolici med drugo svetovno vojno« iz leta 2021. Prav tako je avtorica več kot dvajsetih strokovnih in znanstvenih člankov.