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196. LAW ON ARCHIVAL PRACTICE

LAW ON ARCHIVAL PRACTICE

I GENERAL PROVISIONS

Subject matter of the Law

Article 1

The present Law shall regulate archival practice, archival material and current records, the rights and obligations of the creators and owners of archival material and current records, and other issues significant for the performance of archival practice.

Archival practice

Article 2

Archival practice comprises: record-keeping, collecting, acquisition, arrangement, processing, protection, selection, disposal, access, use and publication of archival material, as well as office management and other operations provided by this Law.

Archival practice is of public interest.

Archival practice is performed by creators and owners of archival material and current records and archival institutions.

Special Protection

Article 3

Archival material and current records enjoy protection provided by this Law.

Archival material and current records which have the status of cultural property enjoy the protection pursuant to the provisions of the Law on Cultural Properties.

Meaning of the expressions

Article 4

Some expressions used in this Law have the following meaning:

- **archives** is considered to be State Archives, institution, other legal entity and part of a legal entity that performs archival practice;
- **a creator of archival material and current records** is considered to be a body, organization, legal entity or an individual who creates archival material and current records;
- **an owner of archival material and current records** is considered to be body, organization, legal entity or an individual who, according to any legal right, owns the archival material or current records of its/her/his own or somebody else's provenance;
- **office management (records management)** comprises all activities which involve acts or documents, irrespective of the form of their origin, from their origination or admittance (admitting, examining, arranging, recording, processing and mail dispatching), to their resolving or processing of their contents and archiving them (administrative technical processing of acts, their archiving and keeping of the archived objects, disposal of worthless current records, selecting of archival material and submitting them to the competent archives);

II ARCHIVAL MATERIAL AND CURRENT RECORDS

Definition of current records

Article 5

Current records are considered to be original and/or reproduced documented material which is the product of work of legal entities and individuals, bodies and organizations, from which no archival material has been selected.

Current records represent archival material in creation, thus the provisions of this Law, and other regulations which refer to archival material, are applied thereon in the process of their protection.

Protection of current records

Article 6

Nobody shall damage, destroy, appropriate or alienate current records until archival material is selected therefrom.

Current records shall be treated in accordance with this Law and other regulations which apply to office i.e. archival jobs.

Notion of archival material

Article 7

Archival material is understood as original and/or reproduced records of permanent significance for science and culture, legislative and other needs of individuals and legal entities, which are the product of work of legal entities and individuals, bodies and organizations, regardless of time, place and form of their origin and medium by which they are recorded.

Entirety of archival fond

Article 8

Archival material and current records which are the product of work of legal entities or individuals make the whole (fond) and in principle it cannot be divided.

Without prejudice to paragraph 1 of this article, archival material and current records can be divided or joined, following the consent of the State Archive, if the change in the internal organization of their creator or possessor occurs, because part of the jobs or all jobs of other creator have been taken over.

The body which decides on the division or joining of current records shall designate an owner for every part of the divided or joined material.

The decision from the paragraph 3 of this article shall be delivered to the State Archives not later than eight days from the day the decision has been made.

Safeguarding of current records and archival material

Article 9

The conditions of safeguarding and other obligations of the owner of archival material and current records are prescribed by the Government of Montenegro (hereinafter referred to as the Government), upon the joint motion of the state administration body competent for cultural affairs (hereinafter referred to as the Ministry), and the state administration body competent for information society.

Selection

Article 10

Creators and owners of the public current records shall regularly select archival material therefrom according to the list of categories of current records which contain the terms for retention (hereinafter referred to as the List), which shall be established by the owner.

The consent for the List is provided by the State Archive.

Disposal

Article 11

Creators and owners shall, after selecting the archival material, destroy worthless current records which have been disposed of in accordance with the provision of the Article 12 of this Law.

During the act of destroying the disposed current records whose retention period has expired, security measures should be taken to protect the secrecy of data that may violate public interests or interests of the citizens.

The process of selection, disposal and submission

Article 12

The process of selection of archival material, disposal and destroying of the worthless current records, the mode of valuation and making inventory of the material with the terms for retention, keeping records and the way and conditions of submission thereof shall be prescribed by the Ministry.

Acquisition of archival material

Article 13

Archival material is acquired by taking over, purchase, exchange, as a donation or legacy.

The obligation to submit archival material to the State Archives

Article 14

Public archival material shall be submitted to the State Archives within the period that, as a rule, cannot be longer than 30 years after their creation.

Creators or owners are obliged to select, make an inventory and arrange the archival material prior to the submission to the State Archives.

In the event the material is necessary for performing current business, i.e. is still operative after the expiry of the period referred to in paragraph 1 of this Article, the owner shall make the inventory of the material together with State Archive and determine the period within which the records shall be submitted to the State Archive.

The obligation for the submission of the archival material to the State Archive applies to the material containing personal data, as well as to the material classified as secret by the Law or other regulation.

On the occasion of submission to the State Archives, the material referred to in the paragraph 4 of this Article shall be recorded separately with the period of availability to the public and the conditions of use.

The way and conditions of the submission of archival material

Article 15

Selected, arranged, listed and marked archival material is submitted to the State Archive as a whole, in the original form and technically equipped.

The State Archive shall take charge of the archival material, even if it is not prepared as elaborated in the paragraph 1 of this Article, provided that it is necessary to protect and save the material from damage or destruction.

In the cases mentioned in the paragraph 2 of this Article, the submission expenses, including arrangement, the making of the inventory and the placement in the State Archive, are borne by the owner.

Special cases of taking charge over archival material

Article 16

Should the creator or owner stop working, they shall hand over the arranged and listed archival material and current records to the subject assuming their rights and obligations.

If there is no legal successor, and the scientific, cultural and historical value of archival material has been established, the State Archives shall take charge of it.

The State Archives shall take charge of archival material if it is necessary to save it from destruction or damage, and it shall ensure the keeping of documents which are not due to be disposed of.

The submission expenses referred to in the paragraph 3 of this Article, including the arrangement, the making of the inventory and the placement in the State Archive, are borne by the owner.

Selection, arrangement and submission of the material at the owner's expense

Article 17

If the creators or owners of the current records and archival material fail to fulfil the prescribed obligations referred to in the Article 14, paragraph 1 and the Article 15, paragraph 1 of this Law, the State Archives shall pass the decision on the selection, arrangement and submission of records and material and execute it at the owner's expense.

A complaint can be lodged against the decision from the paragraph 1 of this article.

The complaint shall not postpone the execution of the decision.

Special protection of the archival material

Article 18

The owners of archival material and current records ensure and carry out special protection of archival material and current records in the case of the state of emergency.

In accordance with the obligations from the defence plan, the Government establishes the measures for the timely preparation and protection of archival material and current records if the state of war, state of imminent war danger, or state of emergency should occur.

Creators and owners of the current records and archival material

Article 19

The Creators and owners of archival material and current records have rights, obligations and liabilities provided by this Law regarding the use, management and disposal of archival material and current records.

Use of the archival material

Article 20

Public archival material shall be available for use in the archives to every legal entity and individual under equal conditions, in the way prescribed by this Law and other regulations.

Archival material is available for use after the expiry of the periods established by the owners, taking into consideration that the periods shall not exceed 30 years from the day of creation of the archival material.

Archival material shall be available before the expiry of the 30-year-period provided that it is intended for the public, or if it is permitted by the owner.

Purpose of the use of archival material

Article 21

Archival material shall be used for official purposes, scientific research, professional, publication, educational, cultural needs and purposes, for exhibitions and publishing, for exercising personal and other rights and needs of legal entities and individuals, for exercising the functions of the State of Montenegro or municipalities, and for other justified purposes.

Limitation of the use of the archival material

Article 22

Archival material and current records which contain the data relating to the national security and defence, as well as foreign, monetary and economic policy, whose publication would cause damaging consequences upon the interests of the state or the security of Montenegro, shall be available for use after the expiry of the period of 50 years from their creation, unless otherwise is provided by a special regulation.

Conditions for use of the archival material

Article 23

The use of archival material, finding aids and services in the State Archives, is free of charge, provided that they do not require special expenses.

Special expenses referred to in paragraph 1 of this Article are borne by the user of archival material in accordance with the regulations passed by the Government.

The permission of the State Archives shall be necessary if archival material is used for publication, copying, promotion or profit making.

The State Archive can permit the publication of the public archival material, i.e. reproducing for advertising, promotion or similar purposes, if it is not contrary to the character or meaning of archival material, and if the measures of technical protection or condition of archival material is not violated.

The way, conditions and the procedures for the use of archival material, making copies and verifying them, is prescribed by the Ministry.

Period of availability of the archival material containing personal data

Article 24

The archival material containing personal data shall be available for use after the expiry of 70 years from the day of its creation and not before 20 years from the day of death of the person concerned.

Without prejudice to this, the archival material can be used before the expiry of the periods referred to in the paragraph 1 of this Article, if the permission is given by the person concerned, or his/her spouse, children or parents after his/her death.

Responsibility for damage emerging from the use of archival material

Article 25

A person having permission to use archival material shall be responsible for any damage and violation of rights emerging from the use thereof.

Taking the material abroad

Article 26

Archival material and current records taken abroad shall not be retained permanently therein.

Archival material can be taken abroad and retained temporarily with the permission of the State Archives.

Types of archival material and current records

Article 27

Archival material and current records can be public and private.

Public archival material and current records

Article 28

Public archival material and current records have emerged from the operation and work of the state bodies, organizations, institutions, and other legal entities whose founder is the State or municipality, the capital city or the former Royal capital (hereinafter referred to as the municipality), as well as from other legal entities and individuals who perform public duties.

Obligations of the creator and owner of public archival material and current records

Article 29

A Creator and owner of public archival material and current records shall:

- 1) notify the State Archives about their foundation within 30 days as of the day of the foundation, as well as about all the changes concerning the status and the organization, in order to deliver opinion on the treatment of current records and archival material, i.e. to initiate the procedure for their protection;
- 2) deliver the data on all the changes in the condition of archival material to the State Archives, in order for proper records to be kept;
- 3) provide adequate premises and equipment for the placement of current records and archival material;
- 4) mark, put the date and keep a proper record of current records;
- 5) designate a person responsible for office management (records management) and archival activities, as well as persons in charge for the protection, processing or use of archival material pursuant to this Law and the public administration standards;
- 6) keep current records in proper and safe condition, and protect them from damage, destruction and vanishing until the archival material are selected therefrom;
- 7) establish the list of categories of current records with the terms for retention;
- 8) regularly dispose of and destroy worthless current records whose retention terms have expired, with the permission of the State Archives;
- 9) keep proper record of archival material and current records;
- 10) classify current records and perform their ongoing archiving;

- 11) make inventory of and describe current records and archival material;
- 12) deliver data and information to the State Archives on archival material;
- 13) ensure availability of archival material and its use under the prescribed conditions;
- 14) enable authorised officer of the State Archives to perform professional supervision over the archival practice;
- 15) abide to instructions and orders of the State Archives regarding the correction of the found deficiencies;
- 16) submit archival material to the State Archives after the expiry of the terms for its retention, in the original form, arranged, marked, listed, technically equipped, in its wholeness, in the place designated by the State Archives, pursuant to the Article 15 of this Law.

The access to public archival material and current records

Article 30

The access to archival material and current records shall be free and is exercised in the way prescribed by Law.

Private archival material

Article 31

Private archival material and current records are the products of operation of legal entities and individuals, unless they have been created whilst exercising public duties or public operations, and if they are not owned by the State.

The owner of the private archival material which is of significance for the science and culture of Montenegro, shall comply with the provisions of this Law which refer to the owners of public archival material.

List of owners of private archival material

Article 32

The State Archives shall make the list of private owners of archival material, which has cultural, scientific, historical or other value for Montenegro.

The State Archives shall keep the Register of the owners of private archival material, in which the following data are entered:

- 1) owner's name, surname address and his/her identity code, or the name of the legal entity and its register number;
- 2) basic data about the creator of archival material;
- 3) a short description of the contents, the time of the creation and the quantity of the material;
- 4) the number and the date of the decision which acknowledges that the material is of cultural, scientific historical or other value for Montenegro, as well as the date of the entry in the Register.

Right of prior purchase

Article 33

If the owner of private archival material intends to alienate the material, he/she shall offer it to the State Archives first.

The State Archives shall inform the offeror within the period of 30 days from the receipt of the offer whether it accepts the offer or not.

If the State Archives does not want to use the right of prior purchase, or if it does not respond to the offer until the expiry of the period referred to in the paragraph 2 of this Article, the offeror can sell the archival material to another buyer, but neither under lower price nor under more favourable conditions than the conditions given in the offer to the State Archives.

The persons who sell the archival material to the State Archives are exempt from paying the taxes.

Other duties of the owners of private archival material

Article 34

An owner of private archival material shall:

- 1) safeguard the archival material permanently, in professional manner and in its entirety;
- 2) enable free access for the State Archives to the archival material;
- 3) provide the State Archives with suitable data on the archival material;
- 4) determine the conditions for the use of private archival material;
- 5) act in accordance with the State Archives professional advice regarding the protection, maintenance, valuation, arrangement and processing of the material, and regarding its conservation and restoration.

III ARCHIVES

State archives

Article 35

The State Archives perform archival practice which relates to archival material and current records produced during the operation of the state bodies, public administration bodies, local government bodies and offices, political parties, non-governmental sector, institutions and enterprises, legal entities and individuals who operate in the territory of Montenegro.

Competence of the State Archives

Article 36

In the scope of the established competence, the State Archives shall:

- 1) carry out measures for preventive and technical protection, conservation and restoration of archival material,
- 2) perform inspection and surveillance of the creators or owners' work, and perform other administrative jobs from its realm,
- 3) keep record on the current records and archival material held by owners,
- 4) take over archival material, in accordance with the provisions of the Articles 15 and 16 of this Law,
- 5) complete the archival material acquired by donations, legacy, deposit or purchase,
- 6) arrange the archival material and design information means about the archival material,
- 7) give data and information on the archival material, ensure the conditions for providing information and give archival material for use,
- 8) ensure physical and technical protection of the archival material,
- 9) publish archival material and other publications by which the protection and use of the archival material is promoted,
- 10) exhibit the archival material, organize lectures and other forms of cultural and educational activities,
- 11) examine and obtain archival material in the country and abroad in order to complete it,
- 12) establish the unique standards and methodology of archive material processing;
- 13) keep central catalogue of fonds and collections,
- 14) monitor general condition of current records and archival material and suggest measures for its protection,
- 15) keep professional library, collect publications and information means on archival material,
- 16) organize professional training and on-the job training of personnel, and perform the training of the employees in charge of archival operations outside the State Archives, who work for the owners of archival material,

- 17) issue professional publications,
- 18) examine and study the issues from the realm of the protection of cultural properties, archival science, auxiliary historical sciences, law and, information sciences, contemporary technologies of data processing, conservation, restoration and other similar scientific disciplines,
- 19) make and publish scientific studies, organize scientific and professional conferences,
- 20) perform other activities stipulated by this Law.

Prohibition of acquiring archival material

Article 37

Employees of the State Archives, other body or legal entity, who perform the jobs concerning the public archival material and current records, can buy archival material neither for themselves nor for another person, receive it as a gift or obtain it in any other way.

Specialized archives

Article 38

Specialized Archives is an institution or part of a legal entity, which performs archival practice relative to the archival material of a specific creator, or specific practice i.e. branch (university archives, commercial archives, archives of religious community, archives of banks, archives of commercial subjects etc).

Foundation of specialized archives

Article 39

Specialized Archives can be founded by the state, municipality, domestic and foreign legal entities and an individual.

Prior to adopting the act on its foundation, the founder of the archives, referred to in the paragraph 1 of this Article, shall adopt the study dealing with the justification for the founding of such archives.

Prior to adopting the study on the justification for the founding of the archives referred to in the paragraph 2 of this Article, the founder shall obtain the consent from the Ministry about the separation of competences with the State Archives, following the obtained opinion of the State Archives.

Conditions for performing activities of specialized archives

Article 40

Specialized Archives can perform its practice if it has:

- premises for the placement and keeping of material,
- suitable equipment,
- specialized personnel
- consent referred to in the Article 39, paragraph 3 of this Law

The Ministry assesses the fulfilment of the conditions from the paragraph 1 of this Article, and issues permission to the Specialized Archives for performing the practice.

More specific conditions for the performance of activities of the Specialized Archives referred to in the paragraph 1 indents 1, 2 and 3 of this Article, are prescribed by the Ministry.

Record keeping

Article 41

Archives shall keep record on archival material, creators and on the use of archival material.

The type, way and procedures for keeping record referred to in the paragraph 1 of this Article are prescribed by the Ministry.

IV ARCHIVAL PERSONNEL AND THEIR JOB TITLES

Archival personnel

Article 42

Professional archival activities are performed by trained staff with the following job titles: archival technician, senior archival technician, archivist, senior archivist and archival advisor, as well as their matching personnel from the conservation and restoration branch, reprographic and micrographic section, and protection of the archival film library.

Job titles

Article 43

An archival technician can be a person having secondary school qualifications, who has passed the expert examination for an archival technician.

A senior archival technician can be a person having two-year-post secondary school qualifications who has passed the expert examination for a senior archival technician.

An archivist can be a person having a university qualification and who has passed the expert examination for archivists.

A senior archivist may be a person who is an archivist, and has at least five years of work experience in this job.

An archival advisor can be a person who has at least five years of work experience as a senior archivist, and who can, with respect to his/her professional qualities perform the most complex tasks in the archival profession.

Expert examination

Article 44

An expert examination, necessary for performing activities in archival practice, is sat for before the commission appointed by the Ministry.

The conditions, way and the programme for the examination referred to in the paragraph 1 of this Article are prescribed by the Ministry.

Conditions for performing office operations (records management)

Article 45

The person in charge for office operations (records management) and archival jobs for owners and creators of public archival material and current records must pass the professional exam for the performance of archival activity or the professional exam for the work in public authorities.

The person responsible for office operations (records management) and archival jobs with owners and creators of the public archival material and current records must have at least university qualifications.

V. SUPERVISION

Inspection supervision

Article 46

The enforcement of this Law and of the regulations adopted on its grounds shall be under the supervision of the State Archive via archival inspectors, pursuant to the Law which regulates inspector supervision.

VI. PENALTY PROVISIONS

Article 47

A fine of twenty times up to one hundred times the amount of the minimum wage in the State of Montenegro shall be imposed upon a state body, public administration body, local self-government body, a public institution, a public enterprise or any other legal entity and entrepreneur as the creator or the owner of public archival material or current records if they do not:

- 1) notify the State Archive about their foundation within the prescribed period, as well as about the changes concerning the status and the organization (Article 29, paragraph 1, item 1)
- 2) deliver to the State Archives the data on all the changes in the condition of archival material (Article 29, paragraph 1, item 2);
- 3) provide adequate premises and equipment for the placement of current records and archival material (Article 29, paragraph 1, item 3);
- 4) mark, date or keep the prescribed record of current records (Article 29, paragraph 1, item 4);
- 5) appoint a person responsible for office operations and archival activities, and the persons who work on the activities of the protection, processing and use of archival material, pursuant to this law and public administration standards (Article 29, paragraph 1, item 5);
- 6) maintain current records in an orderly and secure condition, as well as keep from damaging, destruction or disappearance, until archival material is selected from them;
- 7) establish current records list by category with the retention deadlines (Article 29, paragraph 1, item 7);
- 8) perform regular disposal and destruction of worthless current records with the expired retention deadlines, with the approval of the State Archives (Article 29, paragraph 1, item 8);
- 9) keep the prescribed record on archival material and current records (Article 29, paragraph 1, item 9);
- 10) have current records filing plan and do not perform regular filing of such material (Article 29, paragraph 1, item 10);
- 11) list or describe current records (Article 29, paragraph 1, item 11);
- 12) give data and information to the State Archives on archival material (Article 29, item 12);
- 13) ensure accessibility of archival material or its use (Article 29, item 13);
- 14) hand archival material over to the State Archives following the expiry of the established custody time in its original form, arranged, marked, listed and technically equipped, in rounded wholes, at the place specified by the State Archives, pursuant to the Article 15 of this law (Article 29, paragraph 1, item 16).

A responsible person in a body or a legal entity will be fined with the amount which is twice up to twenty times higher than the amount of the minimum wage in Montenegro.

Article 48

A fine which is twice up to fifty times higher than the amount of the minimum wage in Montenegro shall be imposed onto the legal entity that owns private archival material if it:

- 1) does not offer the archival material it wishes to alienate the State Archives first (Article 33, paragraph 1);
- 2) sells archival material to another entity, prior to the expiration of 30 days deadline, at the price which is lower or under the conditions that are more favourable than the price and the conditions offered to the State Archives (Article 33, paragraph 1).

A responsible person in a legal entity and a natural person shall be fined with the amount which is twice up to ten times higher than the amount of the minimum wage in Montenegro.

Article 49

A fine which is five times up to twenty times higher than the amount of the minimum wage in Montenegro shall be imposed on a natural person employed in the State Archives, other body or legal entity, who performs the jobs concerning public archival material and current records, if he/she buys archival material for himself/herself or for another person, receive it as a gift or obtain it in any other way (Article 37).

VII. TRANSITIONAL AND FINAL PROVISIONS

Adopting of bylaws

Article 50

The regulations for implementing this Law shall be adopted within a period of six months from the day of entering into force of this Law.

The existing bylaws shall be applied until the adoption of the new bylaws, provided that they are not contrary to this Law.

Harmonization of operation

Article 51

The owners of archival material and current records shall harmonize their acts with provisions of this Law within the period of six months from the day of its entry into force.

Title recognition

Article 52

The persons who acquired professional titles for the performance of archival activities pursuant to former regulations will have their professional titles recognized according to the ones prescribed by this law.

Cessation of the applicability

Article 53

As of the day the present Law enters into force, the Law on Archival Practice (Official Gazette of the Republic of Montenegro 25/92 and 6/94) shall cease to be applicable.

Entering into force

Article 54

The present Law shall enter into force on the eighth day as of the day of its publication in the Official Gazette of the State of Montenegro.

