

Office for Human and Minority Rights

Sector for Promotion and Protection of Human Rights

Belgrade

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Questionnaire for Member States

Human Rights Council resolution 21/7 on “Right to the truth”

1. Can the Member State provide information on what it considers to be good practices in the establishment, preservation and provision of access to national archives on human rights? In answering this question, the Member State may consider the following aspects:

- 1.1. Does the Member State have a national archival policy on human rights which is enacted in law?

The Republic of Serbia does have a legally based policy on state archives. In accordance with the Cultural Goods Act¹, a network of archive institutions has been established in Serbia based on a territorial principle. According to the provisions of the Act, the Serbian Archives is the home, i.e. the central institute for the protection of archive materials. The archives network of the Republic of Serbia consists of general type archives. The archive institutions which are legally prescribed to keep records of the archive materials, collect, store, process and give the archive materials to use, are not specialised for a single archive material (human rights archive). As prescribed by the law, they instead take the previously arranged and listed archive materials from all the government institutions and organisations, units of territorial autonomies and local self-governments, institutes, companies, political parties and their bodies, other organisations, religious communities, as well as individuals, irrespective of when and where they were created and whether or not they are located inside or outside of the protection institutes. Therefore, there may be many funds keeping human rights materials which were created by the above mentioned creators.

¹ “Official Gazette of RS“, No. 71/94.

- 1.2. Does the legislation declare that the nation's documentary heritage is to be retained and preserved?

The Cultural Goods Act determines a system of protection and use of cultural goods. It also defines cultural goods as creations of material and spiritual culture of common interest which enjoy special protection in accordance with the provisions of the Act. Archive materials have been defined as original and reproduced written, drawn, computerised, printed, photographed, filmed, microfilmed, photographed or in other way recorded documentary materials of special importance for science and culture. As prescribed by the law, archive materials are cultural goods.

- 1.3. Does the legislation create the framework for managing State records? Does it provide the mandate of the archival authority and set out the rules for its operations?

The Cultural Goods Act prescribes an obligation for cultural goods, depending on the kind they are, to be entered into the registries run by the protection institutes. The cultural goods registries are public, while the central institutes for the protection of cultural goods also run the central registries. In accordance with the law, the Republic of Serbia underwent a categorisation of archive materials. There is a persistent problem of archive materials which have not been categorised and thus not entered into the registries (even though they are included in the provisions of the Act). The archive materials located in the archive institutions belonging to the Serbian Archives network have been categorised and will be successively entered into the registries while the remaining archive materials have not been categorised. Namely, the archive materials may be kept in institutions which could, due to their operational demands, form the so-called archive departments or special archives outside the Serbian Archives network. The reason for that is the different legislative treatment of institutions where the non-categorised archive materials are made and kept. Different regulations do conflict at times because the role and the importance of archive materials are not always being considered in the right way.

- 1.4. Does the legislation establish clear criteria and procedures for access to archives?

Access to the archives in terms of archive materials being used, is not regulated under a single legal act. The lack of one such act that would in a single and uniform way regulate all the issues concerning archive materials and archival profession is one of the leading problems which cause further difficulties in imprecise or no answers being provided to questions of use and access to data contained in the archive materials.

Institutions that form part of the Serbian Archives network have a specially regulated procedure for the use of archive materials. Institutions such as the Serbian Academy of Science and Arts, Matica Srpska, Serbian Orthodox Church, Serbian Armed Forces, Ministry of Interior and Ministry of Foreign Affairs have regulated the way in which archive materials are used by way of internal rulebooks or special laws.

The Cultural Goods Act does not regulate the use of all types of archive materials. For instance, the provisions of the Act do not apply to the archive materials created by security services (persons' files). However, since the documents contained in those files are important for certain civil rights to be exercised (rehabilitation of persons procedure), the Serbian Archives has internally regulated the terms and the procedure of delivering copies of the documents to the courts of law before which these procedures are conducted, as well as the procedure of the protection of personal data of all persons that are contained in the files. In accordance with the Cultural Goods Act, access to archive materials may be limited if the donor of those archive materials imposes certain limitations (Article 39 (5)).

The Law on Free Access to Information of Public Importance² does not contain provisions concerning the access to data contained in the archive materials. The Personal Data Protection Act³ contains an exemption to the application of certain of its provisions on data that is available in the "archives, museums and other similar organisations."

1.5. Does the Member State have information on what it identifies as good practices in the development of capacity to manage records?

The Serbian Archives Service harmonises its work with the recommendations of the International Council of Archives (ICA).

1.6. Does the Member State have information on what it considers to be good practices in the training of archive staff as well as the development of guides to manage records?

The Republic of Serbia offers no education for the archive staff through regular schooling. The Serbian Archives, as the central institute for the protection of archive

² "Official Gazette of RS", No. 120/04, 104/09 and 36/10.

³ "Official Gazette of RS", No. 97/2008, 104/2009 – state law, 68/2012 – Constitutional Court Judgement and 107/2012.

materials, holds trainings for persons working in the archival profession. Provisions of the Cultural Goods Act prohibit any handling of archive materials without previous training and passed professional examination. The training places special attention on the importance and the managing of the registries.

- 1.7. Does the Member State have information on what it identifies as good practices on physical security of archival institutions?

There are minimum requirements prescribed for an institution (archives) to be able to perform the role of protecting the archive materials, while the requirements securing the physical protection of archive materials are well known. Due to financial reasons, the conditions of physical protection of archive materials are often borderline satisfactory or below the approved level. It is precisely the state of the objects where archives are kept that are problematic, as well as the extent to which they are well equipped (shelves, archive cabinets and archive boxes).

- 1.8. Does the Member State have a proactive outreach programme aimed at making people aware of what archive exist and what services are available to them?

The archive institutions are very culture-education orientated, predominantly focusing on attracting the wider spectrum of citizens so to emphasise the role of the archive institutions and demonstrate the richness of the funds they dispose of. This work is largely reflected in the hosting of exhibitions, publishing magazines and publishing the archive materials in journals specialising on the topic.

2. Where applicable, does the Member State have information on what it identifies as good practices in providing access to archives on human rights for transitional justice mechanisms (e.g. specific judicial mechanisms and other non-judicial mechanisms, such as truth and reconciliation commissions)?

Taking into consideration that all archive materials have been declared cultural goods, the task of archive institutions is also to supervise the creators of scaled materials and archive materials and, after issuing materials which have been categorised as “for permanent keeping” and as “to be taken to the competent archives”, this type of materials will become available to the public.

3. Where applicable, does the Member State have information on what it considers to be good practices in providing assistance by means of technical cooperation and the

exchange of information concerning administrative, legislative and judicial and non-judicial measures, as well as experiences and best practices regarding the preservation and management of archives?

The question of keeping and running the archives is regulated under the Cultural Goods Act, with the Serbian network of archives falling under the jurisdiction and competence of the Ministry of Culture. In accordance with the provisions of the existing laws and regulations, the archive institutions are co-operating with institutions (primarily the courts of law) which contact them requesting certain data. In that respect, the archive institutions perform a service to the requesting institutions.

Court case files are stored in the courts' archives in accordance with the provisions of the Judicial Rules of Procedure⁴ (Articles 233 - 242). Access to the archived case files is allowed to the parties in the respective proceedings and their legal representatives. In case a person who is not a party in the proceedings wishes to gain access to the archived case file, he/she must submit an official request to the president of the court explaining his/her reasons why he/she ought to be granted such access. Other courts of law, government institutions and bodies may be given the requested case files once the president or the employee appointed by the president has given a written approval. Depending on the type of case proceedings, the archived case files are kept for a period prescribed in Article 241 of the Judicial Rules of Procedure. After the specific period has finished, the documents contained in the case files are destroyed. The destruction of the case documents is done by a committee established by the president of the court, with the committee chairperson having to be appointed from the line of judges working in that court. When destroying the case documents, the committee may decide to save case files of historic and scientific importance and permanently store them in the court archives. One exception to this rule is the Appeals Court which destroys all the case files in their entirety after a period of five years since all the decisions and judgements of the Appeals Court are sent to the first-instance courts and kept in their archives.

4. Consider and, if relevant, comment on the role that can be played by international organizations, including the Office of the High Commissioner for Human Rights, to assist Member States in the establishment, preservation and provision of access to national archives on human rights.

International organisations, including the Office of the High Commissioner for Human Rights, could help by firstly giving suggestions and recommendations on human rights state archives, then providing information about the way all archives of other member

⁴ "Official Gazette of RS", No. 110/2009, 70/2011 and 19/2012.

states are organised, and finally granting us access to the archives of international organisations which handle the human rights matter.