

Pursuant to Article 82, paragraph 1, item 2 and Article 91, paragraph 1 of the Constitution of Montenegro, the 24th convocation of the Assembly of Montenegro at the 10th session of its first regular session of 2010, on July 27, 2010 passed the following:

ARCHIVAL SERVICE ACT

I. BASIC PROVISIONS

Scope of Act

Article 1

This Act regulates current records and archival material, the rights and obligations of creators and owners of current records and archival material, type of archives and other issues of significance for performing archival service.

Archival service

Article 2

- (1) Archival service includes the following: registering, collecting, arranging, processing, protecting, selecting, using and publishing of archival material, as well as office management and other affairs in accordance with law.
- (2) Archival service is a service of public interest.
- (3) Archival service shall be performed by creators and owners of current records and archival material and archives.

Special protection

Article 3

- (1) Current records and archival material shall be protected as prescribed by this Act.
- (2) To the archival material which have a status of cultural property, provisions of the Act regulating cultural property apply.

Definitions

Article 4

For the purpose of this Act, some terms mean the following:

- (1) **“Archives”** means an administrative body competent for archival service, institution, body or other legal person or a part of them performing archival service;
- (2) **“Creator of current records and archival material”** means a body, organization, legal or natural person by whose function or activity current records and archival material are created.
- (3) **“Owner of current records and archival material”** means a body, organization, legal or natural person which, on any legal basis, owns current records or archival material, of their own or of another’s provenance.
- (4) **“Office management”** means encompassing all activities related to current records and archival material from the moment of their creation until their handover to the competent archives (receiving, screening, arranging and distributing of acts for action; mailing,

processing submissions, that is processing of the contents of a material; administrative and technical processing, archiving and keeping acts and documents; extracting and destroying worthless current records; listing, arranging, labeling and technical equipping of archival material; transfer of archival material to the competent archives);

- (5) “**A body**” means a state body, state administrative body, local self-government body or local government body.

II. CURRENT RECORDS AND ARCHIVAL MATERIAL

(1) Definition and Types of Current Records and Archival Material

Current records

Article 5

- (1) Current records means original and/or reproduced documentary material in analogous and/or electronic form, which was created by function or activities of bodies, organizations, legal and natural persons, from which archival material has not been selected.
- (2) Current records means archival material in the making; hence, in the procedure of their protection, provisions of this Act and other regulations referring to archival material apply.

Archival material

Article 6

Archival material means original and/or reproduced documentary material of permanent significance for science, culture, legal evidence and other needs by natural and legal persons, which was created by function or activities of bodies and organizations, legal and natural persons, regardless of time, place, its creation form and medium in which it is recorded.

Type of current records and archival material

Article 7

- (1) Current records and archival material can be public and private.
- (2) Public current records and archival material are the material which is created by function or activities of bodies, organizations, institutions, and other legal persons the founder of which is state or municipality, the Capital (hereinafter “municipality”), other legal and natural persons executing public authority, as well as all other material owned by the state.
- (3) Private current records and archival material are the material created by function or activities of legal or natural persons, if they are not created in execution of public authority and they are not state-owned.

Protection of current records

Article 8

- (1) Current records shall not be damaged, destroyed, pilfered or misappropriated prior to the extraction of archival material.
- (2) Current records shall be handled in accordance with this Act and other regulations regulating office operations, that is archives operations.

Archival fond

Article 9

- (1) Current records and archival material created through the function or activities of a certain creator shall comprise a whole, that is, an archival fond and they may not be divided or merged with the material of another creator.
- (2) As an exception to paragraph 1 of this Article, current records and archival material may be divided, that is merged in the case of a division or a merger of their creators, that is owners, with the previously obtained consent from the state administrative body competent for affairs of archival service (hereinafter “State Archives”).
- (3) A body, legal and natural person which passes a decision on division or merger of current records and archival material is obligated to determine the owner of each part of the divided or merged material and to provide the State Archives with such decision within eight days after the day of its passing.

(2) Handling Public Current Records and Archival Material

Keeping current records and archival material

Article 10

The method and conditions for keeping public current records and archival material and related duties of creators and owners shall be prescribed by the Government of Montenegro (hereinafter “Government”), upon the proposal of the state administrative body competent for cultural affairs (hereinafter “Ministry”) and state administrative body competent for information society.

Extracting worthless current records and selecting archival material

Article 11

- (1) Creators and holders of public current records are obligated to extract regularly worthless current records and select archival material in accordance with the list of current records categories.
- (2) The Ministry shall prescribe the contents and method of creation of the list referred to in paragraph 1 of this Article.
- (3) The current records category list shall be determined by creators, that is owners of current records.
- (4) State Archives shall give its consent to the list referred to in paragraph 3 of this Article.

Destruction of worthless current records

Article 12

- (1) Following the selection of archival material, public current records owners are obligated to destroy worthless current records in accordance with the regulation referred to in Article 17 of this Act.
- (2) During destruction of worthless current records, security measures shall be taken to protect the data, the unauthorized access to which may violate private or public interests.

Collection of archival material

Article 13

The Archives collects archival material by handing over, taking over, purchasing, exchanging, gifting, devising and in some other way, in accordance with law.

Transfer of archival material

Article 14

- (1) Creators, that is owners of public archival material are obligated to transfer archival material to the State Archives in a way, under conditions and in a time limit prescribed by this Act.
- (2) Public archival material shall be transferred to the State Archives in a time limit, which, as a rule, cannot exceed 30 years after the date of their creation.
- (3) If public archival material are needed for current business, that is if it is operational after the expiration of the deadline referred to in paragraph 2 of this Article, the creator, that is owner is obligated to list that material together with the State Archives and determine the deadline for it transfer to the State Archives.
- (4) On the occasion of a transfer to the State Archives, the archival material containing personal data or other data classified as secret in accordance with a separate law or other regulation, shall be listed separately and accessibility deadlines and conditions of usage shall be determined.

Method of transfer of current records and archival material

Article 15

- (1) Public archival material shall be transferred to the State Archives once they are selected, arranged, listed and marked, grouped in logical units, technically equipped for its permanent keeping.
- (2) By way of exception, the State Archives shall accept archival material, which is not prepared in accordance with paragraph 1 of this Article, should such action be necessary to preserve or save them from damage and destruction.
- (3) In the case referred to in paragraph 2 of this Article, the creator, that is owner of archival material shall cover expenses incurred from its arranging, listing, technical equipping and housing at the State Archives.
- (4) If a creator, that is owner of public current records and archival material ceases to work, it is obligated to transfer material, listed and arranged, to an entity taking over his rights and obligations.

Takeover of current records and archival material

Article 16

- (1) If a creator, that is owner of public current records and archival material ceasing to work has not a legal successor, his material shall be taken over by the State Archives.
- (2) If a creator, that is owner of public current records and archival material fails to fulfill the obligation referred to in Article 14, paragraph 1 of this Act, the State Archives shall pass a decision that such obligation be fulfilled at its expense.
- (3) The appeal does not postpone the execution of the decision.

Method of extraction, selection and transfer

Article 17

The Ministry shall prescribe a method of extraction and destruction of worthless current records, selection, assessment, listing and transfer of archival material, determining deadlines of keeping, as well as the contents and method of keeping records of archival material.

Arranging and processing of archival material

Article 18

- (1) Archives are obligated to arrange and process the archival material in accordance with current international and national standards and professional instructions.
- (2) At the proposal of the State Archives, the Ministry shall prescribe national standards and professional instructions for arranging and processing of archival material.

Preservation of current records and archival material in special cases

Article 19

- (1) Creators and owners of current records and archival material are obligated to provide for and implement their special safekeeping in wartime or states of emergency.
- (2) The government shall, in accordance with obligations from the defense plan, determine measures for preparation and protection of current records and archival material in the case referred to in paragraph 1 of this Article.

Usage of archival material

Article 20

- (1) Archival material shall be made available for official, scientific-research, expert, journalistic, educational, and cultural needs and goals, presenting and publishing, exercising personal and other rights and needs of natural and legal persons and for implementing the functions of state and municipalities.
- (2) Public archival material shall be made available in archives to every natural and legal person under equal conditions, in a way prescribed by this Act and other regulations.

Limitations to use of archival material

Article 21

- (1) Current records and archival material containing data referring to security, defense, foreign, monetary and economic policy, whose publishing may inflict damage to public interest and security of Montenegro, shall be made available for use upon the expiration of 50 years after their creation, unless otherwise regulated by a separate regulation.
- (2) Archival material containing personal data shall be made available for use upon the expiration of 70 years after their creation and at least 20 years after the death of the person to whom they refer.
- (3) As an exception, archival material can also be used prior to expiration of deadlines referred to in paragraph 2 of this Article, with the consent of the person about whom the archival material refers or the consent of his or her spouse, children or parents, upon his death.

Conditions for use of archival material

Article 22

- (1) Archival material, informational resources on archival material and services in State Archives may be used free of charge, unless this incurs special expenses.

- (2) Special expenses referred to in paragraph 1 of this Article shall be covered by the user of archival material, in accordance with a regulation passed by the Government.
- (3) Permission from the State Archives is required if archival material from the State Archives are used for the purpose of publishing, copying, promoting or profit making.
- (4) State Archives may allow publishing of public archival material, that is their reproducing for the purpose of advertising and promoting, unless this contravenes the character or the significance of archival material and unless this disturbs technical protection measures, that is the condition of archival material.
- (5) The Ministry shall prescribe the method and conditions of usage of archival material.

Compensation for damage incurred during usage of archival material

Article 23

A person using the archival material shall be held responsible for any damage and violation of rights resulting from the usage of archival material.

Taking and returning archival material

Article 24

Provisions of the Act regulating cultural property apply to cases of taking archival material abroad and returning archival material that were unlawfully taken out and brought in.

Handling private current records and archival material

Article 25

- (1) Provisions of this Act determining the handling of public current records and archival material accordingly apply to private current records and archival material which:
 - 1) was created within a registered activity or by the activity of legal and natural persons;
 - 2) was considered to be of significance for science, culture and history of Montenegro or of other social significance of public interest, unless otherwise regulated by this Act.
- (2) The State Archives shall take over current records and archival material referred to in paragraph 1, item 2 of this Article, in such a way and under such conditions as determined in agreement with the creator, that is the owner of the material.

Sale of private archival material

Article 26

- (1) A creator and owner wishing to sell private archival material are obligated to offer it first to the State Archives.
- (2) The State Archives is obligated to inform the bidder within 30 days of the day of the receipt of the offer as to whether they accept the offer.
- (3) If the State Archives does not accept the offer or fails to respond to the offer within the deadline referred to in paragraph 2 of this Article, the bidder may sell the archival material to another person, but not at a lower price or at more favorable conditions than those offered in his offer to the State Archives.

(3) Obligations of Creators and Owners of Current Records and Archival Material

Obligations of creators and owners of public current records and archival material

Article 27

A creator and owner of public current records and archival material are obligated to:

- (1) inform the State Archives within 30 days after the day of its establishment about its establishment as well as about any change of status and organization for the purpose of giving the opinion on handling the current records and archival material, that is for the purpose of initiating the procedure of their preservation;
- (2) provide data to the State Archives on all changes of condition of the archival material, for the purpose of keeping the prescribed records;
- (3) provide adequate space and equipment for housing current records and archival material;
- (4) mark, date and keep prescribed records on current records and archival material;
- (5) appoint a person that will be responsible for administrative, that is archival operations, as well as persons performing the tasks related to protection, processing and use of archival material, in accordance with this Act and standards of the state administration;
- (6) Keep the current records in an arranged and safe condition from damage, destruction and disappearance until the archival material is selected from them;
- (7) Determine a current records category list with keeping deadlines;
- (8) Extract regularly and destroy the worthless current records whose retention deadlines expired, with permission of the State Archives;
- (9) Classify, list, describe and keep current records and archival material;
- (10) Provide access to archival material and its inspection, under prescribed conditions;
- (11) Abide by professional instructions and orders by State Archives when removing identified shortcomings;
- (12) Transfer archival materials to the State Archives, upon expiration of a determined deadline for its retention in the original form, arranged, marked, listed, technically equipped, in logical units, in a place determined by the State Archive in accordance with Article 15, paragraph 1 of this Act.

Obligations of creators and owners of private archival material

Article 28

Creator and owner of private archival material are obligated to:

- (1) keep the archival material permanently, in a professional manner and in its entirety;
- (2) provide the State Archives with free access to archival material;
- (3) provide the State Archives with adequate data on archival material;
- (4) provide for use of archival material;
- (5) act in accordance with the State Archives' expert advice on protection, maintenance, assessment, arrangement and processing of the archival material, as well as on their conservation and restoration;
- (6) transfer archival material to the State Archives in such a way and under such conditions as prescribed by this Act.

II. ARCHIVES

State Archives

Article 29

The State Archives render archival service with regard to current records and archival material created by the work of bodies, political parties, non-governmental organizations and other legal and natural persons operating on the territory of Montenegro, and they especially:

- (1) provide preventive, natural and technical preservation and conservation and restoration of archival material;
- (2) perform inspection monitoring of creators and owners of current records and archival material and other administrative tasks within their scope of activities;
- (3) keep a file on creators and owners of current records and archival material;
- (4) keep a file on current records and archival materials kept by owners;
- (5) provide opinion on justifiability of establishing of special archives;
- (6) research, collect, complete and take over the archival material, in accordance with Articles 15 and 16 of this Act;
- (7) arrange archival material and create informational resources on archival material;
- (8) provide data and information on archival material, provide conditions for informing and giving archival material for use;
- (9) publish archival material and materials promoting preservation and use of archival material;
- (10) exhibit archival material, organize lectures and other kinds of cultural and educational activities;
- (11) keep the central catalogue of archival fonds and collections;
- (12) monitor the general condition of current records and archival material and propose measures for their protection;
- (13) collect publications and informational resources on archival material;
- (14) organize professional advanced training of archival staff in archives and conduct a training of employees of owners of archival material which are in charge of archival service outside of the State Archives;
- (15) research and study issues from the field of preservation of cultural goods, archive administration, auxiliary historical sciences, law and information science, modern technologies in data processing, conservation and restoration and other related scientific disciplines;
- (16) organize scientific and expert gatherings;
- (17) perform other tasks determined by law and other regulations.

Prohibition of obtaining of archival material

Article 30

The employees performing the tasks related to public current records and archival material may not purchase, take as a gift or in some other way obtain archival material for themselves or for another person.

Prohibition referred to in paragraph 1 of this Article includes a period of five years after the day an employee ceases to work on such tasks.

Special archives

Article 31

Special archives is an institution of a part of a body or a legal person performing archival service with regard to archival material of a certain creator or certain activity, that is a field (University archives, economic archives, religious communities archives, bank archives, archives of economic operators, etc.).

Establishing Special archives

Article 32

- (1) Special archives may be established by the State, municipality, domestic and foreign legal and natural person.
- (2) Founder of the Special archives is obligated prior to passing the act on establishment, to obtain the consent of the Ministry on defining the responsibilities with the State Archives.

Conditions for performing the Special archive service

Article 33

- (1) Special archives may perform the service if:
 - 1) It has premises and equipment for storing, keeping and usage of archival material;
 - 2) It has means to continually perform the service;
 - 3) It has expert archival staff.
- (2) The Ministry shall prescribe detailed conditions for performing the service of Special archives.
- (3) The Ministry shall determine whether requirements to perform Special archives service is fulfilled and it shall issue approval for work.
- (4) Approval referred to in paragraph 3 of this Article shall be submitted to the State Archives.

Files

Article 34

- (1) Archival institutions are obligated to keep a file on archival material and its creators, owners and users of archival material.
- (2) Types, contents and methods of keeping a file referred to in paragraph 1 of this Article shall be prescribed by the Ministry.

IV. ARCHIVAL STAFF AND PROFESSIONAL TITLES

Archival staff

Article 35

- (1) Activities within archival services can be performed by persons who have adequate type and level of qualifications; passed licensing exam for performing archival service and other conditions in accordance with law.
- (2) Persons referred to in paragraph 1 of this Article perform tasks of archival service having a particular professional title.
- (3) Type and level of qualifications to perform the tasks of archival service and conditions, program and method of administering licensing exam shall be prescribed by the Ministry.
- (4) Certain professional tasks of the archival service may also be performed by persons who have professional and scientific titles in the field of conservation, library and museology in accordance with general acts of the Archives.

Professional titles

Article 36

- (1) Professional titles in archival service are as follow:

- 1) Archival technician, with secondary education;
 - 2) Senior archival technician, with two-year degree;
 - 3) Archivist, with University education;
 - 4) Senior archivist and archival advisor, with University education and special professional references to perform archival service;
- (2) Professional titles referred to in paragraph 1, items 1, 2, and 3 of this Article are acquired by passing a licensing exam to perform tasks in archival service;
- (3) Professional titles referred to in paragraph 1, item 4 of this Article are given by the Ministry, upon proposal of the expert commission, based on professional references and results with regard to archival service;
- (4) The Ministry shall prescribe detailed conditions and methods of acquiring professional titles referred to in paragraph 1 of this Article, tasks to be performed by persons with particular professional titles and a form of certificate on professional title.

Conditions to perform administrative operations

Article 37

- (1) A person directly tasked to perform administrative duties and archival tasks at creators and owners of public current records and archival material must have a professional title referred to in Article 36, paragraph 1 of this Act or passed a licensing exam to work in state bodies.
- (2) A person responsible for administrative duties and archival tasks at creators and owners of public current records and archival material must have the 7th degree qualification.

V. MONITORING

Inspection monitoring

Article 38

Inspection monitoring of the application of this Act and regulations passed based on this Act shall be performed by the State Archives through archival inspectors in accordance with the law regulating the inspection monitoring.

VI. PENALTY CLAUSES

Article 39

- (1) A monetary fine from twenty-fold to one hundred-fold of the amount of minimum earnings in Montenegro shall be imposed for an offense upon a legal person and contractor which is a creator or owner of public archival material and current records if:
 - 1) It fails to inform the State Archives on their establishment and on all changes of their status and work organization (Article 27, paragraph 1, item 1);
 - 2) It fails to provide the State Archives the data on all changes of conditions of the archives (Article 27, paragraph 1, item 2);
 - 3) It fails to provide the adequate space and equipment for storing of current records and archival material (Article 27, paragraph 1, item 3);
 - 4) It fails to mark, date or keep files on current records and archival material (Article 27, paragraph 1, item 4);

- 5) If fails to appoint a person responsible for administration, that is archival service and persons to work on protection, processing and usage of archival material (Article 27, paragraph 1, item 5);
 - 6) It fails to keep the current records arranged and safe from damage, destruction and disappearance, until the selection of archival material is done (Article 27, paragraph 1, item 6);
 - 7) If fails to establish a current records category list with retention deadlines (Article 27, paragraph 1, item 7);
 - 8) It fails to extract and destroy worthless current records whose retention period elapsed, with a permission from the State Archives (Article 27, paragraph 1, item 8);
 - 9) If fails to classify, list, describe and keep current records and archival material (Article 27, paragraph 1, item 9);
 - 10) It fails to provide access to archival material or its usage, under prescribed conditions (Article 27, paragraph 1, item 10);
 - 11) It fails to abide by professional instructions and orders by the State Archives with regard to removal of identified shortcomings (Article 27, paragraph 1, item 11);
 - 12) It fails to transfer archival material to the State Archives, upon expiration of the established deadline for its retention, in its original form, arranged, marked, listed, and technically equipped, in logical units, on a place determined by the State Archives, in accordance with Article 15 of this Act (Article 27, paragraph 1, item 12);
 - 13) It starts to perform the activities of Special archives prior to obtaining a permission to work by the Ministry (Article 33, paragraph 3);
- 2) In case of an offence contemplated in paragraph 1 of this Article, the responsible person in a body or in a legal person shall be fined from two-fold to twenty-fold of the amount of minimum earnings in Montenegro.

Article 40

- (1) A monetary fine from ten-fold to fifty-fold of the amount of the minimum earnings in Montenegro shall be imposed for an offense upon a legal person or contractor who is the creator or owner of the private archival material if:
 - 1) It fails to first offer the State Archives the archival material which it wants to sell (Article 26, paragraph 1);
 - 2) It sells the archival material to other person prior to expiration of a 30 day deadline, at a lower price or at more favorable conditions than those offered in an offer made to the State Archives (Article 26, paragraphs 2 and 3);
 - 3) It fails to keep the archival material permanently in a professional manner and in its entirety (Article 28, paragraph 1);
 - 4) It fails to enable the State Archive a free access to archival material (Article 28, paragraph 2);
 - 5) It fails to provide adequate data on the archival material to the State Archives (Article 28, paragraph 3);
 - 6) It fails to enable the usage of private archival material (Article 28, paragraph 4);
 - 7) It fails to act in accordance with professional instructions by the State Archives with regard to protection, maintenance, appraisal, arrangement, and processing of archival material and its conservation and restoration (Article 28, paragraph 5);
 - 8) It fails to transfer archival material in such a way and in such conditions as prescribed by this Act (Article 28, paragraph 6);

2) In case of an offence contemplated in paragraph 1, the responsible person in a legal person and natural person shall be fined from two-fold to ten-fold the amount of the minimum earnings in Montenegro.

Article 41

A natural person employed at the State Archives, other body or legal person which works with public archival material or current records shall be fined from five-fold to twenty-fold the amount of the minimum earnings in Montenegro.

VII. TRANSITIONAL AND CLOSING PROVISIONS

Passing by-laws

Article 42

- (7) Regulations for implementation of this Act shall be passed within 6 months after the day of entry into force of this Act.
- (8) Until adoption of the by-laws referred to in paragraph 1 of this Article, acts applied until the entry into force of this Act, apply, unless they contravene this Act.

Harmonization of work

Article 43

Creators and owners of current records and archival material are obligated to harmonize their acts with this Act, within a year after the day of entry into force of this Act.

Acquired rights

Article 44

- (1) Adequate professional titles prescribed by this Act shall be acknowledged for persons which, by previous regulations, acquired professional titles to perform archival service.
- (2) Persons who on the day of entry into force of this Act have more than 15 years of experience in performing tasks in archival service having certain levels of qualifications or Masters or Ph.D. in archival service are not obligated to take the licensing exam for performing archival service.

Termination of validity

On the day of entry into force of this Act, the validity of the Act on Archival Services shall terminate (“Official Gazette of Republic of Montenegro” 25/92 and 6/94).

Entry into force

This Act enters into force on the eighth day after the day of its publishing in the “Official Gazette of Montenegro.”

SU-SK File No. 01-355/14

Podgorica, July 27, 2010

24TH CONVOCAATION OF THE ASSEMBLY OF MONTENEGRO

PRESIDENT

Ranko Krivokapić

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- THE END OF TRANSLATION –

I hereby confirm that this translation complies with it's original text.

Book No. 1 for 2010, Item No. 64.

Place and date: Mostar, October 25, 2010

Signature: Sanja Ćemalović, Translator and Certified Court Interpreter