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Legal norms as a context for collecting, processing and providing access to archival materials in Poland in 1919–2019

Normy prawne jako kontekst narastania, opracowywania i udostępniania materiałów archiwalnych w Polsce w latach 1919–2019

Abstract: Legal regulations have a major impact on the fulfilment of all the basic functions of archives. First, these regulations have a significant impact on the content and accessibility of an archival resource, including the possibility to use it to learn about the past. Second, they themselves reflect the changes in how authorities, society and individuals perceive archival materials over time. Such regulations also emerged at the time when Poland regained its independence in the 20th century and underwent a number of transformations over the following 100 years.

Keywords: archives, archival law, legal regulations, functions of archives, Poland

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Streszczenie: Regulacje prawne istotnie wpływają na wykonywanie wszystkich podstawowych funkcji archiwów. Po pierwsze, od nich w dużej mierze zależy zawartość i dostępność zasobu archiwalnego, w tym także możliwość jego wykorzystania do poznawania przeszłości. Po drugie, same w sobie odzwierciedlają zmieniające się w czasie postrzeganie materiałów archiwalnych przez władzę, społeczeństwo i jednostki. Takie unormowania pojawiły się również w momencie odzyskania przez Polskę niepodległości w XX w. i na przestrzeni następnych 100 lat ulegały licznym przekształceniom.

Słowa kluczowe: archiwa, prawo archiwalne, regulacje prawne, funkcje archiwów, Polska

Legal regulations have a significant impact on archival work, i.e. collecting, compiling and providing access to archival materials. Legal provisions determine the content and form of documents produced by offices, institutions and individuals. They also determine which of these documents are to be protected as archival materials subject to perpetual preservation and to whom and on what grounds archives are made available.

Such norms emerged when Poland regained its independence in the 20th century and over the next 100 years, they were subject to numerous transformations, determined both by political and civilisational changes. The purpose of this text is to review how these transformations took place, to indicate their scope and their relationship with the political and technological changes. Generally applicable laws and, to the necessary extent, other normative acts were used as sources. They were analysed in a substantive manner, taking into account both the findings of theory and archival methodology, and the rules of interpreting legal acts.

Three consecutive legal acts of statutory rank were of fundamental importance for archival work in Poland. The first was the Decree of 7 February 1919 on the organisation of state archives and the care of archives (hereinafter referred to as the Decree of 1919).¹ This was one of the temporary legal acts of statutory rank issued by the Chief of State in the initial period when the

¹ Dekret z dnia 7 lutego 1919 r. o organizacji archiwów państwowych i opiece nad archiwiami, Dz.Pr.P.P. 1919, vol. 14, item 182; T. Mencel, *Dekret o archiwach i opiece nad archiwami z 7 lutego 1919 r. na tle ówczesnego ustawodawstwa archiwalnego w Europie*, in: *Sześćdziesięciolecie polskich archiwów państwowych. Materiały z sesji. Łódź 10.11.1979*, ed. A. Tomczak, Warszawa 1981, p. 5–36; M. Konstankiewicz, *Prawo archiwalne II Rze-*

legal system was being built after Poland had regained independence in 1918. Another regulation appeared in the completely new political circumstances in Poland that were shaped at the end of World War II, when the Decree of 29 March 1951 on the State Archives (further referred to as the 1951 Decree) came into effect on 10 April 1951.² This featured a residual normative content, while the relevant regulations were placed in its implementing acts.

Finally, at the beginning of 1984, the Act of 14 July 1983 on National Archival Resources and Archives³ came into force, which has been the leading regulation in the field of archival activities to date (hereinafter referred to as the Archival Act). In the years 1989–2019, it underwent forty-three amendments, some of which were related to the reconstruction of Poland's political system towards a democratic state of law, while others adjusted this legal act to the global technical and civilisational changes taking place. The most important amendments were those made in the years 2007 (with regard to most aspects of the operation of archives), 2015 (with regard to the accrual and archiving of documentation of public entities), 2016 (with regard to the rules of access to the state archival resource) and 2019 (adaptation to the European regulation on personal data protection).⁴

For more than a century, this sequence of statutory regulations has formed the formal basis for the operation of the state archives and the body

czypospolitej, in: *Archiwa w Niepodległej. Stulecie archiwów państwowych, 1919–2019*, ed. E. Rosowska, Warszawa 2019, p. 79–92.

² Dekret z dnia 29 marca 1951 r. o archiwach państwowych, Dz.U. 1951, no. 19, item 149.

³ Ustawa z dnia 14 lipca 1983 r. o narodowym zasobie archiwalnym i archiwach, Dz.U. 1983, no. 38, item 173.

⁴ Ustawa z dnia 2 marca 2007 r. o zmianie ustawy o narodowym zasobie archiwalnym i archiwach oraz ustawy – Kodeks pracy, Dz.U. 2007, no. 64, item 426; Ustawa z dnia 20 marca 2015 r. o zmianie ustawy o narodowym zasobie archiwalnym i archiwach, Dz.U. 2015, item 566; Ustawa z dnia 25 lutego 2016 r. o ponownym wykorzystywaniu informacji sektora publicznego, Dz.U. 2016, item 352; Ustawa z dnia 21 lutego 2019 r. o zmianie niektórych ustaw w związku z zapewnieniem stosowania rozporządzenia Parlamentu Europejskiego i Rady (UE) 2016/679 z dnia 27 kwietnia 2016 r. w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych i w sprawie swobodnego przepływu takich danych oraz uchylenia dyrektywy 95/46/WE (ogólne rozporządzenie o ochronie danych), Dz.U. 2019, item 730.

in charge of their activities, which was initially the Minister of Religious Affairs and Public Education (after World War II, the Minister of Education) and since 1951 the General Director of the State Archives as body subordinated to various ministers over the years, currently to the Minister of Culture and National Heritage. In this text, the state archives and the aforementioned bodies are referred to as archival administration. In these regulations, the status of the current archives of public institutions was gradually defined in more detail, from 1951 onwards distinguishing a group of separate archives enjoying a high degree of autonomy.⁵ The archives of private institutions were regulated to a more limited extent.

The regulations on the protection of monuments were, and are, important for the protection of archival materials. Initially, they were contained in the Decree of the Regency Council of 31 October 1918 on the care over monuments of art and culture,⁶ replaced by the Decree of the President of the Republic of Poland of 6 March 1928 on the care over monuments.⁷ This regulation was amended and supplemented after the Second World War by the Decree of 1 March 1946 on the registration and prohibition of the export of works of plastic art and items of artistic, historical or cultural value.⁸ Another regulation, the Law of 15 February 1962 on the Protection of Cultural Property and Museums,⁹ also contained provisions explicitly referring to archival materials.

⁵ R. Galuba, *Archiwa wyodrębnione w państwie demokratycznym*, in: *Nowa archiwistyka – archiwa i archiwistyka w późnonowoczesnym kontekście kulturowym*, eds. W. Chorańczewski, W. Piasek, A. Rosa, Toruń 2014, p. 119–136.

⁶ Dekret Rady Regencyjnej z dnia 31 października 1918 r. o opiece nad zabytkami sztuki i kultury, *Dziennik Praw Królestwa Polskiego* 1918, no. 16, item 36; S. Ehrenkreutz, *Archiwiści objazdowi czy konserwatorowie zabytków sztuki kultury*, „Archeion” 1927, vol. 1, p. 146–150.

⁷ Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 6 marca 1928 r. o opiece nad zabytkami, *Dz.U.* 1928, no. 29, item 265, as later amended.

⁸ Dekret z dnia 1 marca 1946 r. o rejestracji i zakazie wywozu dzieł sztuki plastycznej oraz przedmiotów o wartości artystycznej, historycznej lub kulturalnej, *Dz.U.* 1946, no. 14, item 99.

⁹ Ustawa z dnia 15 lutego 1962 r. o ochronie dóbr kultury i o muzeach, *Dz.U.* 1962, no. 10, item 48.

A significant change occurred with the entry into force of the Archival Act, which comprehensively regulated the legal protection of archival materials, while at the same time excluding these matters from the scope of the regulations on the protection of monuments.¹⁰ Subsequent legal changes, however, meant that once again the Act on the Protection and Care of Monuments, this time from 2003, is directly applicable to archival materials with regard to the keeping of the Heritage Treasures List and the national register of lost cultural property, and temporarily between 2004 and 2017 with regard to the restitution of archival materials located in the territory of the Republic of Poland and illegally exported from the territory of a Member State of the European Union.¹¹ This last issue is currently the subject of separate regulation.¹²

The Act on the Institute of National Remembrance passed in 1998 completes the catalogue of the most key statutory acts for archival activity.¹³ It defines the functioning of the archival department of the INR in a completely separate way, regulating the gathering and making available of documents connected with the functioning of the apparatus of totalitarian repressions in the 20th century on the territory of Poland.

The legal obligation to ensure appropriate storage conditions for archival materials, necessary conservation, recording and protection against destruction, damage or loss was imposed on all institutional entities, both public and private, only by the 1983 Archival Act (Article 12). Previously, it resulted indirectly from criminal provisions defining as prohibited acts the destruction of archival materials. Such norms were contained in all successive regulations for the protection of monuments, and from 1984 this function was taken over by Article 52 of the Archival Act.

¹⁰ W. Stępiak, *Archiwalia w polskim systemie prawnym ochrony dóbr kultury*, "Archeion" 1987, vol. 82, p. 68–75.

¹¹ M. Konstankiewicz, A. Niewęglowski, *Narodowy zasób archiwalny i archiwa. Komentarz*, Warszawa 2016, p. 26–28.

¹² Ustawa z dnia 25 maja 2017 r. o restytucji narodowych dóbr kultury, Dz.U. 2019, item 1591.

¹³ Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu, Dz.U. 2023, item 102.

The Regulation of the President of the Republic of Poland of 1928 on the protection of historical monuments allowed for the possibility of temporarily seizing a historical monument (including archives) when in danger of destruction, damage or unauthorised export abroad. Since the amendment of the aforementioned regulation made in 1933,¹⁴ state archives have been indicated as the places of storage of seized monuments in case of a threat to their state of preservation and as entities on whose behalf a monument could be confiscated in the event of its unauthorised export abroad. Article 37 of the 1962 Law on the Protection of Cultural Property and Museums also empowered provincial conservators of monuments to make temporary seizures of monuments under threat of destruction, damage or illegal export abroad, but this provision did not apply to public archives (Article 83). Since the amendment of the Archival Act made in 2007,¹⁵ Article 12a, a decision of the director of the competent state archive may be made to compulsorily and temporarily transfer archival materials to that archive if there is a justified fear of their destruction, damage or loss.

The legal protection of archival resources is also ensured by the regulation of the export of archival materials across state borders. Initially, under the provisions of the 1918 and 1928 regulations on the protection of historical monuments, the competence to issue permits for exporting archival records constituting historical monuments belonged to the voivodes. By the aforementioned decree of 1 March 1946, this power was transferred to the Minister of Education, while the General Director of the State Archives was designated as competent to issue such permits only in the implementing regulations of the 1962 Act on the Protection of Cultural Property and Museums.¹⁶ This solution was upheld by the provisions of the Archival Act (Article 14).

¹⁴ Ustawa z dnia 25 stycznia 1933 r. o zmianie rozporządzenia Prezydenta Rzeczypospolitej z dnia 6 marca 1928 r. o opiece nad zabytkami, Dz.U. 1933, no. 10, item 62.

¹⁵ Ustawa z dnia 2 marca 2007 r. o zmianie ustawy...

¹⁶ Rozporządzenie Ministra Kultury i Sztuki z dnia 30 czerwca 1965 r. w sprawie trybu zgłaszania wniosków oraz wydawania zaświadczeń i zezwoleń na wywóz za granicę dóbr kultury, Dz.U. 1965, no. 31, item 206.

Reversing the effects of illegal cross-border transfer of archival materials has fallen under the regulatory jurisdiction of European Union law.¹⁷ Currently, the provisions of the Act of 25 May 2017 on the restitution of national cultural property apply directly to archival materials. It regulates the procedure for the restitution of cultural property removed from the territory of Poland and the return of cultural property located on the territory of the Republic made on the basis of European Union law or international agreements.¹⁸

With regard to influencing private entities owning archival materials, the Decree of 1919 provided for the archival administration to apply non-coercive measures only, i.e. without coercion. The Department of State Archives was tasked with giving private persons and institutions a whole manner of instructions with regard to the preservation and conservation of archival collections (Article 17). With the consent of these entities, their archives could be visited by Department employees (Article 18). Finally, Article 7 provided for the possibility of accepting privately owned archival materials for safekeeping in the state archives.

Measures of a sovereign nature, on the other hand, were available to the conservation authorities on the basis of regulations on the protection of monuments. The latter imposed an obligation on the owner of such facilities to make them available for conservation research, prohibited their export abroad and allowed for the possibility of expropriation from them. The provisions of the 1918 Regency Council Decree on the Care of Monuments of Art and Culture also subjected monuments owned by local government units and ecclesiastical and social institutions to conservation supervision and restrictions on civil trade. Under the 1928 Regulation of the President of the Republic of Poland on the Care of Monuments, conservation supervision and the right of first refusal in favour of the State Treasury already applied to all monuments.

¹⁷ Dyrektywa Parlamentu Europejskiego i Rady 2014/60/UE z dnia 15 maja 2014 r. w sprawie zwrotu dóbr kultury wyprowadzonych niezgodnie z prawem z terytorium państwa członkowskiego, zmieniająca rozporządzenie (UE) nr 1024/2012 (wersja przekształcona), Dz.Urz. UE L 2014, no. 159, p. 1.

¹⁸ Ustawa z dnia 25 maja 2017 r. o restytucji...

The provisions of the 1951 decree did not apply at all to archival materials that did not constitute a state archival resource. The legislation on the protection of monuments continued to apply to them. However, when the Archival Act came into force at the beginning of 1984, it excluded the application of the 1962 Act on the Protection of Cultural Property and Museums to archival materials. At the same time, it provided a basis for the archival administration to take a number of measures towards their owners. There was the conclusion of cooperation agreements between the archives of non-state organisational units and the minister responsible for culture (Article 45(4)) and the maintenance of a register of non-state archival resources (Article 41(3)), into which archives constituting non-state archival resources could be entered at the request of their owners. In addition, it was envisaged that ownership of archival materials would be transferred, by force of law, to the State Treasury if the institutional entity owning them ceased to operate (Article 44). This was accompanied by the introduction of restrictions on the circulation of private materials of institutional (Article 43) and personal provenance (Article 9).

These legal solutions, created under the systemic conditions of the People's Republic of Poland, underwent relatively few changes after 1989, given the increased importance of non-state entities in almost all spheres of life. In the years 2006–2007,¹⁹ first the possibility of remuneration for the transfer of archival materials of private provenance to public institutions was abolished, followed by the register of non-state archival resources. Only under the 2015 amendment, after increased interest in social archives activities, was a legal mechanism created to provide state support for the archival activities of private entities. Article 43a added to the Archives Act authorises the General Director of State Archives to commission non-governmental organisations to carry out public tasks in the scope of recording, storing, compiling, providing access to and safeguarding archival materials comprising the recorded non-state archival resource.

¹⁹ Appropriately: Ustawa z dnia 18 października 2006 r. o zmianie i uchyleniu niektórych upoważnień do wydawania aktów wykonawczych, Dz.U. 2006, no. 220, item 1600 and Ustawa z dnia 2 marca 2007 r. o zmianie ustawy...

The regulation of the 1919 Decree in the area of collecting materials produced in state offices and institutions (Article 6) the state archives was rather sparse and even makeshift. According to it, taking over such archival material was to take place by rule of agreement between the Minister of Religious Affairs and Public Education and the relevant minister. These provisions were later supplemented by normative acts, which, however, did not refer to the Decree of 1919 as their legal basis. First, it was the Decree of the Council of Ministers of 28 October 1920 on the office management of ministries,²⁰ which expressly stipulated the obligation to obtain the consent of the archival administration for the destruction of any official records. The overall regulation was the Resolution of the Council of Ministers of 21 December 1931 on the storage of files in public administration offices.²¹ It was a normative framework act, which required detailing and modification by means of normative acts of individual ministers.²² It laid down the rules for the qualification of files, the determination of periods for keeping files in an office in a file repository, together with the requirements for its maintenance, as well as the procedure for separating archival materials from documentation accumulated in offices, the supervision of this by state archives, the transfer of archival materials to them and the inspection powers of the archival administration.

This area as a whole (but only in relation to state entities) was regulated by the provisions of the 1951 Decree and the Regulation of the Council of Ministers of 19 February 1957 on the state archival resource issued on its basis.²³ This regulation stipulated the deadlines and procedures for the transfer of archival records to the state archives (§ 10 and 11), while the

²⁰ Rozporządzenie Rady Ministrów z dnia 28 października 1920 r. w sprawie biurowości ministerstw, M.P. 1920, no. 251, p. 1.

²¹ Uchwała Rady Ministrów z dnia 21 grudnia 1931 r. o przechowywaniu akt w urzędach administracji publicznej, M.P. 1932, no. 2, item 3.

²² M. Tarakanowska, *Problem brakowania akt w Polsce w świetle przepisów i literatury archiwalnej w latach 1918–1965*, "Archeion" 1967, vol. 46, p. 48–50; A. Moraczewski, *Sprawa przekazywania akt administracji rządowej do archiwów państwowych w świetle obowiązujących przepisów*, "Archeion" 1937–1938, vol. 15, p. 35–48.

²³ Rozporządzenia Rady Ministrów z dnia 19 lutego 1957 r. w sprawie państwowego zasobu archiwalnego, Dz.U. 1957, no. 12, item 66, as later amended.

General Director of the State Archives, as well as the central and provincial state archives, were authorised to issue rulings declaring documentation to be subject to destruction (§ 12). Pursuant to § 9 section 2, the state archives were entrusted with the supervision of the operation of the file repositories. Thus, on the basis of § 8, a legal mechanism emerged for the archival administration to intervene in the content of the internal normative acts of offices and institutions regulating the organisation and scope of operation of the file repositories, the deadlines and manner of preservation of archival materials, the procedure for their transfer to the state archives and the procedure for the destruction of non-archival documentation.

The provisions of the Archival Act, which came into force at the beginning of 1984, essentially continued this model of shaping the growing archival stock, and even the rather extensive amendment made in 2015²⁴ did not make any significant changes in this respect. Important additions to the provisions of this Act were the regulations issued on its basis – first in 1984 (supplemented by two regulations of the General Director of the State Archives), replaced by another in 2002 and the current one in 2015.²⁵

Initially, the most detailed provisions of the Archival Act governing the accumulation, destruction and archiving of documentation covered only state bodies and organisational units, and only since 1999 their scope has been extended to local government and its organisational units.²⁶ With regard to non-state organisational units, the provisions of the Act from the

²⁴ Ustawa z dnia 20 marca 2015 r. o zmianie ustawy...

²⁵ Appropriately: Rozporządzenie Ministra Nauki, Szkolnictwa Wyższego i Techniki z dnia 25 lipca 1984 r. w sprawie zasad klasyfikowania i kwalifikowania dokumentacji oraz zasad i trybu przekazywania materiałów archiwalnych do archiwów państwowych, Dz.U. 1984, no. 41, item 216; Rozporządzenie Ministra Kultury z dnia 16 września 2002 r. w sprawie postępowania z dokumentacją, zasad jej klasyfikowania i kwalifikowania oraz zasad i trybu przekazywania materiałów archiwalnych do archiwów państwowych, Dz.U. 2002, no. 167, item 1375; Rozporządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 20 października 2015 r. w sprawie klasyfikowania i kwalifikowania dokumentacji, przekazywania materiałów archiwalnych do archiwów państwowych i brakowania dokumentacji niearchiwalnej, Dz.U. 2019, item 246.

²⁶ Ustawa z dnia 24 lipca 1998 r. o zmianie niektórych ustaw określających kompetencje organów administracji publicznej – w związku z reformą ustrojową państwa, Dz.U. 1998, no. 106, item 668.

outset guaranteed these entities far-reaching autonomy in determining the rules for accruing, qualifying, preserving and making available their documentation (Articles 13 and 45) and formulated only restrictions on the transfer of ownership of archival materials held by such entities (Articles 43 and 44).²⁷

Article 6 of the Archival Act formulates a general obligation to ensure the recording, preservation and protection of documentation accruing first in state entities, later extended to local government units. The same provision stipulates the introduction of internal records and archival norms in consultation with the competent archival administration body. As in previous regulations, the Archival Act (Article 5) and the regulations issued on its basis set out the rules for the destruction of documentation by public entities with the consent of the competent authority and the rules for the transfer of archival materials by these entities to the state archives. Both of the aforementioned provisions were amended in 2015, albeit without affecting their substance.

The spread of information technology in the creation and management of documentation made it necessary to adapt the provisions of the Archival Act. First, in 2006, three related regulations were issued to regulate the handling of electronic documents in public entities.²⁸ In 2011, a regulation²⁹ was issued that unified the rules of documentation management in a large part of the public administration apparatus and, importantly, Appendix 1 regulated the electronification of the office workflow, under the name of

²⁷ M. Konstankiewicz, *Regulacje polskiego prawa archiwalnego dotyczące archiwaliów prywatnych*, "Wschodni Rocznik Humanistyczny" 2016, vol. 13, p. 336–342.

²⁸ Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 30 października 2006 r. w sprawie niezbędnych elementów struktury dokumentów elektronicznych, Dz.U. 2006, no. 206, item 1517; Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 30 października 2006 r. w sprawie szczegółowego sposobu postępowania z dokumentami elektronicznymi, Dz.U. 2006, no. 206, item 1518; Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 2 listopada 2006 r. w sprawie wymagań technicznych formatów zapisu i informatycznych nośników danych, na których utrwalono materiały archiwalne przekazywane do archiwów państwowych, Dz.U. 2006, no. 206, item 1519.

²⁹ Rozporządzenie Prezesa Rady Ministrów z dnia 18 stycznia 2011 r. w sprawie instrukcji kancelaryjnej, jednolitych rzeczowych wykazów akt oraz instrukcji w sprawie organizacji i zakresu działania archiwów zakładowych, Dz.U. 2011, no. 14, item 67.

electronic documentation management. It was not until 2015³⁰ that the Archival Act (Article 6(1a)) included electronic documentation management as a system of performing office work, documenting the course of dealing with and resolving cases, collecting and creating documentation in electronic form, with the use of an ICT system.

The above-mentioned 2015 amendment to the Archival Act transferred into its text from the previous regulation and comprehensively covered, firstly, the handling of documentation of public entities that have permanently ceased their activities and, secondly, the control activities of the archival administration towards all entities (except institutions with separate archives) carrying out archival activities within the scope of the state archival resource and preserving documentation produced by public entities.

The Second Polish Republic saw the beginning of the solution, still in use today, of regulating the archiving of particular types of documentation in the form of separate regulations issued on the basis of acts other than the Archival Act. The first was the regulation of the Minister of Justice of 2 June 1937 on the storage and destruction of files and books in court cases and court administration.³¹ For court case files and administrative books and records of courts and prosecutor's offices, it set out the periods for their retention in court archives, the rules for their qualification as archival material and the procedure for the state archives to agree to and take over the material in question.

Since the 1990s, there has been a marked increase in the number of such special regulations which either assign the documentation referred to therein the status of archival materials or indicate different modes of its archival qualification. Currently, there are more than a dozen regulations, issued by various bodies, which apply to electronic documentation, surveying documentation, documentation created in public broadcasting entities, documentation created during general elections and referendums or documentation from court cases, bailiffs and public finance discipline cases.³²

³⁰ Ustawa z dnia 20 marca 2015 r. o zmianie ustawy...

³¹ Rozporządzenie Ministra Sprawiedliwości z dnia 2 czerwca 1937 r. o przechowywaniu i niszczeniu akt i ksiąg w sprawach sądowych i administracji sądowej, Dz.U. 1937, no. 42, item 335.

³² M. Konstankiewicz, *Regulacje prawa polskiego mające znacznie dla działalności archiwalnej*, "Archeion" 2020, vol. 121, p. 38–39.

In addition, the legal order contains numerous norms indicating the periods and rules for retaining sometimes very narrowly defined types of documentation. Similarly, a number of regulations oblige various entities to take over particular types of documentation in the event that its creator ceases to exist or the discontinuance of a given activity. The former of these regulations may significantly affect the mode of separation of archival materials from the growing documentation, while the latter may result in the dispersion of documentation between different archives.

Over the course of a century, there has been a profound change in the legal rules governing the provision of archival materials owned by the state.³³ The provisions of the 1919 Decree separately specified how the state archives should make their holdings available for official purposes (Article 8), at the request of individuals (Article 10) and for scientific purposes (Article 11). According to Article 9 of the decree, each ministry, when transferring its files to the archives, could classify part of them as secret files, with the result that access to them was possible only with the approval of the relevant minister. Other restrictions on access were set out in a 1919 normative act entitled “General Rules Determining the Use of the Archives”. Permission for the use of archival materials was granted by the Director of the State Archives, and in the case of foreigners and the use of records before the expiry of 50 years from their production, by the Minister of Religious Affairs and Public Education. It was forbidden to provide access to the archives for the purposes of litigation (unless requested by the court), professional heraldic research and the compilation of lists, statements and repertories.³⁴ The above rules were only slightly corrected by the next regulation of 1928.³⁵

³³ A broad approach to this issue is provided by D. Grot, *Ku przeszłości otwartej. Dostępność archiwów państwowych w Polsce w latach 1918–2014*, Warszawa 2015. The author also draws attention to the great importance of internal regulations and policies of state archives for the actual possibilities of using their resources.

³⁴ R. Piechota, B. Jagiełło, M. Motaś, *Pierwsze protokoły Rady Archiwalnej (1918–1922)*, “Teki Archiwalne” 1971, vol. 13, p. 176–179.

³⁵ Rozporządzenie Ministra Wyznań Religijnych i Oświecenia Publicznego z dnia 16 maja 1928 r. Przepisy archiwalne. Korzystanie z Archiwów Państwowych, Dz.Urz. MWRiOP 1928, no. 11, item 188, as later amended.

Under the 1951 decree, the issue of making archival records available was regulated in an act implementing it.³⁶ Access was granted on the basis of a permit issued by the director of the state archives and, in the case of foreigners, by the General Director of State Archives.

The breakthrough came with the Archival Act of 1983, which adopted the then innovative rule of free access to materials constituting the state archival resource, which consisted in abandoning, as a rule, the granting of permits for such access.³⁷ Originally (in Article 17), there were only two grounds for denying access to the archives. The first was the ban on providing access to archival materials before the lapse of a 30-year period from their production, even as it was at the same time mitigated by rather liberal provisions of subsequently applicable regulations.³⁸ The 2016 amendments to the Archival Act did away with a single universal deadline for the inaccessibility of archival materials, replacing it with a whole range of different grace periods for particular types of archival materials, such as civil registry books or medical or court documentation (Article 16b(2)). This takes into account the extension in 2013 of the Directive 2003/98/EC on the re-use of public sector information to archives.³⁹

The second condition for refusing access was the danger of violating the interests of the state or citizens protected by the provisions of the law. This

³⁶ Zarządzenie Ministra Kultury i Sztuki z dnia 22 marca 1957 r. w sprawie korzystania z materiałów archiwalnych, M.P. 1957, no. 24, item 173, as later amended.

³⁷ The importance of this legal construction was first pointed out by D. Grot, *Regulacje prawne dotyczące udostępniania materiałów archiwalnych*, "Archiwista Polski" 2000, no. 4, p. 47.

³⁸ Successively applicable: Rozporządzenie Ministra Nauki, Szkolnictwa Wyższego i Techniki z dnia 25 lipca 1984 r. w sprawie wcześniejszego udostępnienia materiałów archiwalnych, Dz.U. 1984, no. 41, item 217; Rozporządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 13 grudnia 2000 r. w sprawie określenia szczególnych wypadków i trybu wcześniejszego udostępniania materiałów archiwalnych, Dz.U. 2001, no. 13, item 116, as later amended; Rozporządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 29 lipca 2008 r. w sprawie określenia szczególnych wypadków i trybu wcześniejszego udostępniania materiałów archiwalnych, Dz.U. 2008, no. 156, item 970.

³⁹ Dyrektywa Parlamentu Europejskiego i Rady 2013/37/UE zmieniająca dyrektywę 2003/98/WE w sprawie ponownego wykorzystywania informacji sektora publicznego, Dz.Urz. UE L 2013, no. 175, p. 1; D. Grot, *Ku przeszłości otwartej...*, p. 280–283.

was, in effect, a reference to all laws restricting access to the information contained in the archives. Such an open construction ensured compliance of the Archives Act with regulations quickly expanding at the end of the 20th and the beginning of 21st century and specifying the powers or restrictions in the access to specific types of information (as was the case with acts on protection of personal data or protection of classified information). Following the amendment of 2016, in the scope of restrictions on access to archival materials, the Archives Act explicitly references the provisions on the protection of classified information, provisions on the protection of other secrets statutorily protected and explicitly indicates restrictions on access due to protection of moral rights and personal data (Article 16b(1)). The 2019 amendment introduced provisions specifying ways of safeguarding the freedoms and rights of persons whose personal data are contained in archival materials, such as anonymisation and pseudonymisation of data during access and exclusion of further processing of personal data by users of the resource.

The catalogue of restrictions on access to the resources of the state archives resulting from the original text of the Archival Act was supplemented by two amendments in 2006–2007⁴⁰ to include the possibility of denying access on the basis of the physical condition of the archives. As an exception to the general rule of general access, the procedure for granting permission for the use of the state archives concerned only the cases of granting access before the expiry of 30 years from the date of production of the archival materials (valid, as already mentioned, until 2016) and the granting of access to foreigners (valid until 2006), but it still applies to the granting of access to materials in company archives and in the Institute of National Remembrance. The provisions of the Archival Act, which was the first act to regulate access to non-state archival resources, guarantee the private owners of such archival materials autonomy in determining the rules for their release (section 45(2)).

Three legal acts of statutory rank were of paramount importance for archival activity in Poland – decrees of 1919, 1951 and the Archival Act passed in 1983, later subjected to numerous amendments. Until the latter

⁴⁰ Appropriately: Ustawa z dnia 18 października 2006 r. o zmianie i uchyleniu... and Ustawa z dnia 2 marca 2007 r. o zmianie ustawy...

came into force, regulations on the protection of monuments directly relating to archival materials were also of great importance. The subject of all these regulations was the regime of archives, the legal protection of archival materials, the modes of their collection by state archives and the rules for gaining access to documents stored in the archives. The status of archival materials held by institutions and private individuals was regulated to a more limited extent. Legal regulations covered the processing of archives to a limited extent.⁴¹

The content of the 1919 Decree, which was essentially provisional, focused on the activities of state archives and the accumulation of materials of state provenance in them. The 1951 Decree formally had the same scope, but it was drafted at a time of a very large expansion of the size and role of the state sector in the Polish system after the Second World War. At the same time, the increase in the volume of produced documentation, already visible during the Second Polish Republic and intensifying after the Second World War, made it necessary to expand the legal regulations on the collection in the state archives.

With reference to these factors, the provisions of the 1983 Act were shaped, although it also paid some attention to non-state entities. The political transformation initiated in 1989 brought about gradual and unfortunately fragmentary adaptations of this act to the requirements of a democratic state of law and changes in the organisation of the public sector (e.g. restoration of local self-government). As part of settlements with the previous historical period, the archival activities of the Institute of National Remembrance were covered by a completely separate regulation. Poland's accession to the European Union in 2004 supplemented the system of regulations with acts enacted by the bodies of the Union, particularly those concerning the protection of cultural assets, personal data protection and access to public sector information. At the same time, information technologies have become more widespread and have significantly influenced the form of contemporary documentation, the way it is managed, the way it is archived, and the way in which archival materials are made accessible.

⁴¹ The legal regulations on archival description are highlighted by A. Laszuk, *Standardy de iure*, "Archiwista Polski" 2019, no. 2, p. 14–15, 17–20.

The legal basis for archival activity, after a century of development, nowadays constitutes a complex set of norms contained in numerous and inter-related legal acts. Their proper interpretation requires referencing both the findings of archival theory and methodology and the application of basic principles of legal interpretation. The investigations carried out in this field are, firstly, relevant to the activities carried out by archives of all types (state archives, company archives, separate archives, private archives, ecclesiastical archives, community archives) that use legal norms as tools necessary for the effective collection, preservation and provision of archival materials. Secondly, familiarity with this complex set of regulations is necessary for all users of archival materials, especially historians. To a certain extent, regulations concerning the formation of an accruing archive stock determine which documents will be secured in the archive stock and which will be destroyed – something that should be taken into account when analysing archival sources. Regulations on access, in turn, affect the scope and conditions under which such materials will be made available to interested persons, including for the purposes of research.