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RETENTION PERIODS: THEIR LEGAL BASIS, ROLE AND CHALLENGES IN PRACTICE. RUSSIAN EXPERIENCE

Abstract

The paper presents the traditions, present situation and the prospects of development of normative legal base, establishing retention periods for archival records Russia. Application of normative requirements in practice has many challenges. The most common problems are analyzed by the author, some solutions for their overcoming are proposed. The necessity of constant development and changing of normative basis is emphasized, which in modern conditions requires wide use of information technologies and development of flexible information system which combines requirements of different normative acts, including those developed in various ministries and agencies. The prospects of development of such a system in Russian Federation are presented.

Key words: *List of records with indication of retention periods, Register of record types, retention periods, records series, information system, information technology, elements of artificial intelligence, digital transformation*

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1. APPRAISAL AND PRESET RETENTION PERIODS

In Russia, retention periods are stated in legislative and other normative legal acts, which establish legal minimum periods for maintaining records. These acts form the legal basis for appraisal, which is understood as “the study of records based on the criteria of their value in order to set their retention periods and select them for inclusion in the Archival Fonds of the Russian Federation”(Federal Law 125-FZ, 2004, art.3 par.16). For better understanding of this definition given in the Russian Law, we should explain that the “Archival fonds² of the Russian Federation” combines all the records which have to be stored permanently due to their value as an integral part of the historical and cultural heritage of the peoples of the Russian Federation.

That means that the purpose of appraisal is to determine the retention periods of records, including permanent storage for some of them. This definition corresponds to the one given in the General International Standard Archival Description ISAD(g) (1999, pp. 10) and cited in the ICA Multilingual Archival Terminology Database (ICA, s.d.): “Appraisal: the process of determining the retention period of records” (to compare, see: IIAS, 2021; SAA, 2022; InterPARES, 2022). Appraisal is based on estimation of current and potential administrative, legal, and fiscal use of records; their evidential and informational value, historical, scientific and cultural importance. To certain extent the results of appraisal depend on the opinion of certain decision-makers. Even if the decisions are made collectively, commission-based, they are still based on personal understanding of commission members of the main criteria of appraisal and their practical application. Besides, the procedure of appraising the records or even sets of records takes a lot of time and requires certain number of sufficiently qualified employees. In this regard, the existence of pre-established retention periods for certain series of records is very important.

2. ACTS ESTABLISHING LEGAL MINIMUM RETENTION PERIODS

Some laws contain provisions on minimum retention periods for certain types of records or records containing certain data (for example, for accounting, tax, procurement, personnel records, etc.).

The storage periods of records of various types as well as related to different areas of activity, are comprehensively presented in so called “List of records with indication of retention periods”. These Lists are regulatory acts and they are mandatory for use. Retention periods which are set in the Lists cannot be reduced.

In fact, these are not lists of records, but lists of series of records, divided into thematic groups according to their general subject matter. So the retention periods are set for records series taking into account records type which influences their information capacity and probative value.

It is also provided that specific records within these series may need to be retained longer than it was preliminary established by the lists (circumstances may give those records either longer practical value, or permanent historical value). Therefore, for certain series of records the lists prescribe to make their additional appraisal after the expiration of the indicated storage periods.

Lists are divided into Lists of typical records and Departmental lists.

Lists of typical records contain the most common records, and they are applicable to all types of organizations, regardless of their organizational and legal form and form of ownership. There are two such lists: List of records generated in management activities

² Noun, singular

(Order of the Federal Archival Agency, 2019; Albrekht et al., 2020; Mescherina & Yurasov, 2020) and List of records generated in the process of scientific and technical activities of organizations (Order of the Federal Archival Agency, 2021; Kyung et al., 2021).

Departmental lists contain records formed in the course of the activities of federal state bodies of the Russian Federation, as well as in the course of the activities of their subordinate organizations, indicating the terms of their storage. These lists are based on lists of typical records and include also records which are specific for their area of activities, execution of their functions and competencies. Their application is mandatory for certain state bodies, their territorial bodies, foreign offices, and subordinate organizations, and recommendatory for other organizations which don't have their own lists, including those at regional and municipal levels.

Each list is presented in tabular form and includes the following elements: serial number, series name, retention period (unified or differentiated depending on the level and functionality of the organization), notes, as well as general provisions and search tools.

In addition to definite terms, e.g. 5 years, 6 years, 10 years, etc., there can be used such expressions as "permanently", "until the liquidation of the organization", "until the need passes". The term "permanently" means that organizations which are included in so called "lists of sources of acquisitions" have to transfer these records to state or municipal archives after 15-year (10- or 5-year depending on the status of state (federal/regional) or municipal body or organization) period of their storage in the archive of the organization. Other organizations keep these records for 10 years and can dispose of them afterwards.

Terms for some records have a special mark ("ЭПК" – Expert verification commission or "ЭК" – Expert commission), which means the need for appraisal after the expiration of these terms.

3. DISADVANTAGES OF THE SYSTEM OF LISTS

The system of lists has its disadvantageous features.

3.1. The lists are constructed in such a way that they *need to be adapted for the purposes of automatization, use of artificial intelligence systems*. The series may contain several types (subtypes) of records, and not all of them have the same retention period. Some of them are mentioned in the "Notes" column where the other terms are indicated for them. Sometimes the difference in terms doesn't depend on the records type, but on the specifics of their subject (for example lease agreements concerning the objects of cultural heritage). Some "notes" are explanatory by nature, they give information about the peculiarities of calculating the retention period (for example: after the expiration of the contract).

All these clauses, explanations, exceptions are to be interpreted by the user, and this task is rather complicated for automated systems and systems which use the elements of artificial intelligence. These systems require tasks that can be understood unambiguously and unified wordings and commonly applicable rules.

3.2. The other important feature of the Lists is *the need for their timely and regularly revision and updating*. The legislation and standards change rather fast, as well as the tasks that organizations perform. Technologies are developing, new managers, who have their own vision of organizational processes, are coming. All these circumstances affect the composition of records, their volumes and expediency of retention periods applied. In this regard, there is a need for regular revision and updating of the lists. But for employees it is not a regular task and the process of developing, negotiation, and approv-

ing the lists is quite complicated in itself. The changing legislation creates difficulties for the users of the lists as well, who have to correlate the requirements of these lists with statutory regulations.

3.3. The lists *should be interconnected*, it is necessary to correlate the titles of articles and the retention periods established in various departmental lists. This is not a legislative requirement, but considerations of rationality and expediency. This can be a complicated task in the conditions of existence of more than 70 federal state bodies, and each of them is obliged to have its own List. But, for example, many ministries have sanatoriums and recreation centers, or educational organizations amongst their subordinate organizations. Thus, retention periods for medical records should meet the requirements of the Ministry of Health of the Russian Federation, and retention periods of educational process records – the requirements of the Ministry of Science and Higher Education and the Ministry of Education of the Russian Federation.

4. THE CONCEPTION OF THE REGISTER OF RECORD TYPES

Some of the mentioned difficulties can be resolved within the Register of record types – a promising model of an electronic information system that combines and partially replaces the system of lists. It can also perform a number of other functions, including attachment of unified forms of records, indication of their electronic/paper form, references to the legal acts, creating of system-generated schedules and reports, etc. The conception of the Register, a set of draft legal acts and guidelines for its implementation, use and support have been developed by the All-Russian Scientific and Research Institute for Records and Archives Management (VNIIDAD) (Afanasieva et al., 2020).

The Register will not include the series of records, but types and subtypes of records with indication of their subject matter, author, correspondent, periodicity, etc., if it influences the duration of the retention period. For example, the article 168 from the List of typical administrative records (Order of the Federal Archival Agency, 2019) contains the following series: "Records (conclusions, references, calculations, justifications, plans, correspondence) on the development of records management" with 5-year retention period. For this series the Register will have 6 entries, each with its own identifier: conclusions on the development of records management, references on the development of records management, etc. Explanations and exceptions given in Notes column of the Lists will also receive certain places in the Register. The principles of such fragmentation resemble the construction of a traditional index (finding aid), but with much more functionality.

At the first stage, the Register is seen as an organizational tool which helps automated systems to deal with legal requirements and correlate various regulations.

The elements of this approach are already used in practice, for example, in the Ministry of Taxes and Fees of the Russian Federation. All the articles and their corresponding retention periods from the Ministerial List of records are included in the automated system and are recognized and applied by artificial intelligence.

5. CONCLUSION

Modern conditions ask for deep changes in the area of appraisal, first of all, in regulatory field.

The system of lists was established in the Soviet Union and it worked perfectly in the conditions of centralization and control, when there was only one form of property (state property). This system still works because of deep-seated traditions in records and archives management.

As it was previously demonstrated, it is not quite adaptable to the needs of automated systems, so the appraisal with use of artificial intelligence elements cannot be efficient enough. Departmental lists are overcharged with repeatable information, which can be found in laws, in Lists of typical records, or in some other departmental lists. The form of the Register gives an opportunity to make references to due normative acts which set retention periods and to correlate requirements concerning different areas. It is still not evident whether the Register will replace the lists or not (Afanasieva et al., 2020; Beldova, 2019; Eremchenko, 2020), but for sure the system of lists will be transformed greatly, first of all by eliminating repeatable information.

It is necessary to accept the fact that there is no sufficient regulatory framework on the level of constituent entities of the Russian Federation (85 subjects), and only few aspects are regulated on legislative level for commercial organizations. Obviously, the departmental lists, which are in the process of updating nowadays, can serve a base for regional normative legal acts – but certain changes in legislation are also indispensable.

As for commercial organizations, it seems that there is no need for too strict regulation of the retention periods for their records. The Lists of typical records are able to cover most of their information needs. Nevertheless, it is necessary to give them a tool that they can use according to their needs and in compliance with the law, even without having qualified employees for the purposes of appraisal. The role of standards is seen to be rather important in this concern. That is why we support the proposal of the ISO Technical committee 46 to launch a new project on Disposition standard and find it very useful for our country too.

Technological instruments, which allow records and archives managers to organize the process of appraisal at a qualitatively new level, are developing rapidly nowadays. At the same time further development of the theory and methodology of archival appraisal is indispensable, with taking into account the tasks of the increasing use of information technologies, including AI elements; the specifics of work with electronic records and data. The prospects are seen in revising outdated approaches and using all the benefits of the information technologies, sharing and inheriting best world practices of archival appraisal and evaluation.

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