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FACETS OF ARCHIVAL MEMORY: BETWEEN LEGAL AND HISTORICAL PERSPECTIVES

Abstract

During the ICA Conference in Rome (September 2022), the keynote speaker, Judge Rosario Salvatore Aitala, delivered a very interesting plea for the value of archives, as instruments in international trials. He concluded his speech by asserting that archivists are the "guardians of truths". Nothing is more pleasing to archivists' ears! For many recordkeeping professionals, but mostly for the vast majority of people outside of the field, this is the profession's essence and the archival institutions' main role. This is why a slight change of wording made by David Fricker after the judge's speech, claiming that we, the archivists, are rather "custodians of evidence", may look irrelevant to many; while for others, it may be just another form of saying the same thing. Is it really like this? This is the question that conveniently matched my exploring thoughts in the paper for the Trieste conference this year.

Keywords: truth, records, archives, historical compensations.

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EXAMINE CASES BASED ON ROMANIAN EXPERIENCE

A. "ARCHIVAL SILENCE"

1. In 1948, the Romanian government of the new people's republic proceeded with the nationalization of private companies (Legea 119/1948). The nationalization law required that some compensations should have been paid (art. 13). After the fall of the Communist regime, the former owners—or successors of the owners—reclaimed the abuses of that law, asked for the companies to be returned or compensations be paid to them. Naturally, the claimant turned towards Archives to get the evidence about the past situations. The replies of the Archives varied. In some cases, records reflecting the situation of those companies at the time of nationalization were preserved. In other cases, such records from the moment of nationalization were missing, and the last recorded information dated back one or two years (e.g., the lists of shareholders). In rare cases, evidence of compensation payments in 1948 was preserved.
2. During the Communist regime, a law for the expropriation of public utility was adopted (Decret 467/1979). The article 2 of the law stipulates the compensations that were to be paid for expropriation. After the fall of Communism, many previous owners claimed the expropriated land to be returned or compensation for being expropriated be paid, and—again, turned to the Archives to find supportive evidence for their claims. In many cases the evidence of the expropriations was found; in fewer cases pieces of evidence of the payment of compensation were retrieved.
3. In 1999, a law was adopted in Romania (Ordonanța 105/1999) that granted compensations to people who suffered ethnic discrimination during the WW2 governments' rule (6.09.1940–0.03.1945). The claimants turned to the Archives for evidence supporting their demands. In many cases, the persons' names were found in lists of refugees or deported persons. In some cases, the similarity of names did not allow to precisely identify the person. In other situations, names were not found at all. But the trickiest situation was when records about refugees were found accidentally in records aggregations that nobody thought could contain information about refugees...

The above examples show how historical records have been useful and relevant for the society over the years. Nobody was aware, at the moment of creation of records, that they were supposed to be evidence for rebuilding those circumstances for very practical needs and that the records were supposed to be evidence for a different purpose than originally intended. Perhaps at the moment of nationalization, some Communist believers would have considered those records would show to the history how the working class managed to take over the ownership from the bourgeoisie, as a historical act of the communist revolution. But they definitely did not think these were supposed to be legal evidence of their actions, to restore the expropriated goods. In many cases, the focus on "what we did" (action of nationalization) and not on "how we did it" (with or without compensations, recording the goods taken by the state etc.) led to poor quality of records and archival series, not to mention the low interest for preserving those records. Communism was meant to last forever, so accountability for those actions (mirrored in records) was not relevant. And now, less than 100 years later, considering preserved records, nobody can truly attest if compensations were paid by the State or not—there are no records. No one can say with certainty if the shareholders from 1946 or 1947 were still shareholders at the moment of nationalisation in 1948, or if they had sold their shares meanwhile. Of course, it is not the Archives to decide if the plaintiffs are right or wrong, but courts of law. Nevertheless, the lack of proper records (irrespective the reason), from poor creation to poor preservation (Popovici 2011)) could affect the proper decision of the courts today.

The second presented case is more about the social functions of past institutions and how they are 'hidden' into records.

Despite some shallow assumptions, the Communist regime was governed by laws; it created a legal framework for governing society². Within this framework, institutions were created and mandated to exert certain functions in society. While the expropriation decision was rather an administrative attribute, the payment was a financial one. But not all past institutions transferred their records to the Archives and... who is supposed to know how the administrative or financial institutions worked 50 years ago?! The fact is some years ago, by accident, it was discovered that a bank was used for payment of the compensations back then, and its records should prove if a compensation was paid or not (if those records were preserved—since the financial records have a limited retention period...). This "discovery" occurred after many decisions of paying the compensations had already been issued. How many such requests were grounded or were falsely claimed, in how many cases the compensations were paid also back in the 1980s and again, in the 2000s, is up to the historians of the future to determine. In my opinion, this is a convincing argument for the fact that records may not be readily available when needed. To trace them one needs to know who exerted certain attributes in the past, who is the current holder of those records, what type of records may contain the information needed. If one does not have this information, if one does not know where to search for evidence, the records are, in many regards, useless. But the society survives, nevertheless.

A rather similar situation is described in the third example. The lists of refugees were drawn by Prefectures—the administrative institution of the state. Often, in times of war, not everybody managed to be registered as a refugee. Sometimes, in an innocent administrative report, or in a payroll from a factory, a small note about a certain person indicates they are refugees. Who can trace these in linear kilometres of records? What description system should be applied to retrieve such notes from millions of old pages? Furthermore, how to anticipate, as a description archivist, what to mention in a summary of the file content, in order to anticipate all the future possible interests of users?

I believe the cases above can be included under the "archival silence" (SAA Glossary, sub voce) heading. Either by the negligence of creation, the complexity of records creators' network, management and use, or by the hidden meaning from records unrevealed in our finding aids—all these showed how Archives may not reveal "the whole truth", but rather small pieces of evidence to be used.

B. HISTORICAL SILENCE

1. In 1945, a law for appropriation was adopted in Romania (Legea 187/1945). It implies expropriation of land from those who have over a certain quota (or have their ownership confiscated from various motives, like being of German origin) and appropriation of those who do not have enough productive land. In Article 16, the law specified the price for the appropriated land, which should have been paid in long term (over 10 or 20 years). The evolution of historical events changed the plan envisaged by the law, because, starting from 1952, the so-called "cooperativisation" took place and individuals owning agricultural land (including new appropriated people) were step by step expropriated to create associations for shared production, according to the Communist doctrine. After the fall of Communism, previous beneficiaries of the appropriates turned to the Archives to ask for records to support the restitution of their former properties. As

2 if this framework contains abusive, unbalanced, restrictive clauses from a general perspective—it is very likely true, but is secondary to this paper.

in other cases, documents were not always properly preserved (also because ownership titles were considered outdated since the "cooperativisation" took place), but even in the case where documents attesting previous ownership existed, some historical issues arose. Firstly, many of the German ethnic individuals who were deprived of their goods were claiming the discriminatory approach of being punished based on their ethnicity back in 1944/45 and asked for compensation for the expropriated land. The persons (or their heirs) who were deprived of the land during "cooperativisation", also asked back their plots, received during appropriation--sometimes, the same as the one belonging to the previous German population. That made it possible, that for the same land, more than one request for restitution/ compensation existed. The Archives had to deliver copies from the records available, without any sort of interpretation of historical facts, but... it is exactly where the records could be misleading for rebuilding the original events. Who could know--except as a result of long, extensive research--if a German person was expropriated based on ethnicity reasons or based on real war crimes or collaboration with Germany? Moreover, who can attest if a person who was appropriated paid the price indicated by the law, to be considered owner in full rights?

2. In the case of the above-mentioned refugees, a similar situation occurred. During WW2 in Romania, several waves of refugees existed. Some of the people who ran away from the Eastern part after the Soviet invasion of 1940, returned in 1941 (after the re-establishment of Romanian administration) and went again to refuge after 1944 when Red Army occupied that territory again. Not in all cases records reflect with accuracy these evolutions. Therefore, one individual can be traced in records as being displaced in 1940, and no further evidence about her/his status. The person might have gone back (ceasing the status of refugee) to Bassarabia in 1941, remained there or ran away in 1944 or, on the contrary, s/he could have settled in another part of the country after 1940 and never returned. How would this case be treated from the perspective of compensations? For which period is the person considered a refugee?

Such questions are beyond archival competencies. The Archives are only mandated to deliver copies of relevant records upon request. If a petitioner asks for proof of being appropriated, such a record is searched. To deliver proof that they paid for the price indicated by the law would exceed the request. Also, not considering a person as displaced because their history cannot be traced in full it may seem a bit excessive. Hence, in using archival records for rebuilding past situations it is obvious that the completeness and integrity of archives are essential.

However, this is not enough. History, by its mere definition, is a story. A story is a sequence of events. The record, on the other hand, is a snapshot of one limited event. To understand a process (read: the story), you cannot have only one record, but a sequence of records generated each in probably different contexts. It is like the difference between a still photography and a movie (Popovici, Cincu, 2010). As such, archives may contain evidence, but the way this evidence is used to rebuild past situations needs the ability to understand how those records were created, what records are needed to see the whole event, and what is the significance of the records in the whole process. Otherwise, the recorded evidence can lead to fragments of reality, and the rebuilding process is flawed (not to say frauded...).

C. REPLACING RECORDS

1. In the case of the displaced persons, it was stated above that sometimes, records could not attest this status for some persons: the relevant records were missing, not found or, simply the persons in that time did not register as a refugee. To solve such cases, the legal makers offered an alternative way: legal statements of other refugees.

The original, WW2 archival record was replaced by the statement today. The problem of lack of records is solved.

2. During the Communist regime, some incentives were granted to certain employees, due to their work conditions. When retired, as many former state companies bankrupted and disappeared, the people turned to the Archives to find the evidence for their rights. Due to some legal complications, for a short period National Archives had to take over the payrolls—as these were considered the only “valuable” records from a company records centre and they were the only ones preserved. Initially, the paperwork logic was that such incentives, in many cases, were recorded in another type of records than payrolls, types that were not preserved... As such, many citizens today are requiring the courts of law to legally note they had the right to those incentives³. The lack of relevant contemporary records was compensated by court decisions.

In this case there is not much that Archives could do. They are not mandated to interpret records for legal purposes (at least in Romania). But there are other institutions which can make such interpretations, to rebuild past events and take executive decisions that would equate as results for the lost or not preserved records. This means archives are not irreplaceable as information and society has the means to rebuild a legal situation of the past in the absence of relevant records.

ARCHIVES—THE PLACE WHERE TRUTH RESIDES. OR NOT EXACTLY

The examples above outline a reality where the records are essential tools for governance, and democracy, and for compensating various vicious past decisions and actions. Indeed, everybody turns to the Archives when they need past information. Archives indeed played a central role in rebuilding past abuses, older or more recent. And yes, Archives have, by their social mandate, a monopoly on the records which are useful for those purposes.

But we must equally accept the fact that, legally, missing records do not mean an “the end of the world”. Indeed, records are a tool and a piece of evidence (Interpares Trust Terminology, sub voce). In the legal framework, preserved past records are evidence of past events and a tool to rebuild rights or circumstances. However, the lack of those records does not mean the truth is lost. Or that, with the existence of those traces, unsubstantiated and untruthful decisions cannot be taken today, due to the inability to interpret the past meanings and contexts (read processes and records associated with them).

For many decades, archivists used to spoil themselves with assertions like: “archives are places of memory and archivists are guardians of memories”. On the other end, a postmodern trend brought a rather opposite position, claiming that archives are social constructs, and there is no objectivity in the archives, but rather biased information resources (e.g., Schwarz, Cook 2002). Even though it may be considered a bit extreme to remove any trace of objectivity from records and to describe this space where the record is king, due to its legal value in certain legal contexts, the reality shows that missing evidence can, in many cases, be replaced; that a past event can be rebuilt to produce legal effects today; that records are essential, but not vital for society. That, after all, archivists may have monopoly over records, but not over information⁴.

It may look disappointing, but I find it a fact. Records and archives are products of human activity, and they are created and preserved with a purpose. They are not preserved for

³ Including a person to such a category would imply benefits for the retirement pensions.

⁴ This assertion, which I resonate with, was made by one Austrian colleague, Martin Stürzlinger, during a workshop in Rome (2022).

being tokens, which concentrate truths. The role of records and archives is important because human memory may consign some histories to oblivion and then we need to turn to the archives to remind those historians or to check assertions made about past events. The "persistent representations", whose contexts are documented, are more reliable than human memory. But equally, bad quality of records may lead to bad quality of information and bad decisions today; bad preservation process may lead to lack of bits of information and again to bad decisions and interpretations; lack of understanding of what records are and how they work may lead to the same. Despite the possibility to replace records, the efforts to rebuild them, the risk of not being able to understand past processes, and the costs associated with all these should be an incentive to create, keep and preserve good records and archives. We must preserve good records to have good evidence and to make good decisions. But, if this is not happening, the truth is still out there (whatever "truth" may mean...). Eventually, this means records can be replaced, and the truth is not the monopoly of the archives.

REFERENCES

- Decret 467/1979 Decret nr. 467 din 28 decembrie 1979 privind evaluarea construcțiilor, terenurilor și plantațiilor ce se preiau, cu plata, în proprietatea statului prin expropriere sau în alte cazuri prevăzute de lege în *Buletinul Oficial* nr. 3 din 4 ianuarie 1980 at <https://legislatie.just.ro/Public/DetaliiDocument/511> (last consulted 1.10.2022)
- Interpares Trust Terminology <http://interparestrust.org/terminology>
- Legea 119/1948 Lege Nr. 119 din 11 iunie 1948 pentru naționalizarea întreprinderilor industriale, bancare, de asigurări, miniere și de transporturi în *Monitorul Oficial* nr. 133 bis din 11 iunie 1948 at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/46> (last consulted 1.10.2022)
- Legea 187/1945 Lege Nr. 187 din 23 martie 1945 pentru înfăptuirea reformei agrare în *Monitorul Oficial* nr. 68 bis din 23 martie 1945 at <https://legislatie.just.ro/Public/DetaliiDocument/34> (last consulted 1.10.2022)
- Ordonanța 105/1999 Ordonanța nr. 105 din 30 august 1999 privind acordarea unor drepturi persoanelor persecutate de către regimurile instaurate în România cu începere de la 6 septembrie 1940 până la 6 martie 1945 din motive etnice în *Monitorul Oficial* nr. 112 din 13 februarie 2020 at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/223042> (last consulted 1.10.2022)
- Popovici 2011 Popovici, Bogdan-Florin *Despre calitatea surselor arhivistice și rolurile autorului-creatorului-deținătorului de documente*, în *Revista arhivelor*, București, nr. 2/2011, p. 256-265
- Popovici, Cincu 2009 Popovici, Bogdan-Florin, Cincu Monica, *Autenticitate notarială, autenticitate istorică, autenticitate arhivistică*, în „Hrisovul”, XV (2009), Serie nouă, București, 2010, p. 33-45.
- SAA Glossary <https://dictionary.archivists.org/>
- Schwarz, Cook 2002 Schwartz, Joan M., Cook, Terry, *Archives, Records, and Power: The Making of Modern Memory in Archival Science* 2: 1–19, 2002.