



Reconstruction of Private Archives in Turkey

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ABSTRACT

Archives have been divided into two groups in both theory and the practice in the Archival Science. The first is “public archives” and the other is “private archives”. There are ownership, usage right and belonging of these documents on the basis of this classification. The identification of the private archives has become important because private organizations and capital have an effective role in both production and management of the State and many countries have had to make new regulations in the archive legislation. Legislation in our country has been examined on the scope of our study and the current situation has been revealed. In order to understand the legal regulation very well the studies abroad have been included in the study, and practices have been examined. In the last part of the study necessary factors related to the private archives in National Archive Law have been detailed.

Keywords: Public archives, Private archives, Legislation.

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I. Introduction

The concept of private archives has been perceived as a material in different formats that people have brought them together on the basis of their interests and concerns and it has been discussed in a narrow framework, because archives are accepted as a memory of both individual and nation and when appropriate, it is one of the important tools that contribute to the protection of the country welfare in international platform. Archives that have such an important mission are not just from the documents that are created as a result of official action and taken under protection in the formal institutions of the government.

Official documents in the government archives are important as of having evidence in the first degree and operating on it. However, it will not be enough to judge or research on the basis of these documents. Some private documents that are not included in the government records are indispensable sources for the researchers who seek “the truth”. These private documents are generally stored in the archives of some people, family, associations, semi-public and private institutions that come to the forefront with various activities in society or have major tasks at state level. Thus, there are some archive documents that can have negative and positive effects that interest the public or government between these documents that have private ownership.

Within the scope of our study, private archive definitions, private archive practices and legislation in some countries that develop in the archive field have been examined. Some evaluations have been carried out related to the legislation in our country and provisions related to the private archives in National Archive Law.

II. Private Archives

The concept of private archives has been perceived as a material in different formats that people have brought them together on the basis of their interests and concerns and it has been discussed in a narrow framework. However, the archive is defined as a place where they are stored by institutions that are responsible for managing, using, protecting and selecting the archive documents within certain standards.

Two important activities that determine the quality within the purpose of creation of the archive are selection and use of the documents. Thus, it does not mean that each material is an archive document and to store them is record keeping. In this context, the stored material is required to have “document” feature or contain information; give tips or have legal evidence related to any activity. We can see that the aim and impact area of the archives that have been formed for the purpose of meeting the information needs of administrative acts have converted into an information centre that meets the need

of individual in each area. This conversion gives important responsibilities to the archive and archivist from protecting their documents to submitting them to the service. Archives are accepted as a memory of both individual and nation and when appropriate, it is one of the important tools that contribute to the protection of the country welfare in international platform (Anameriç and Rukancı, 2008; Anameriç, 2009; Rukancı, 2009). For this reason, it is important to understand the importance of the private archives very well, to store them, to submit them to the service, and to control these stages during these processes.

a. Definitions of Private Archives

On the basis of different definitions of the private archives, we can say that the simple definition of it is unofficial archives (Ataman, 1997). The Society of American Archivists define the private archives as “informal sourced” archive material (Bellardo and Bellardo 1992: 27). At the same time, International Council on Archives-ICA defines the private archives as “informal sourced” documents that have been formed by non-governmental organizations, institutions and some organizations (Walne, 1988, p. 356). Heinrich Otto Meisner discusses the private archives as a document formed as a result of activities of a legal entity. Schöggel-Ernst (2007, p. 273) has determined that this legal entity can be associations, personnel partnership, foundations, political parties in addition to being a person. Jenkinson and Schellenderg (Fisher, 2009, p. 6) have defined the private archives as a document formed as a result of activities of organizations that are useful for the public except for government or in the State life of individual.

Private archives are defined as materials that are formed “in the special activity process of private person and institutions and in private property” in Chinese Archive Glossary of Terms. Property owners who are responsible for forming the archives are not exactly determined in this definition. However, Chinese archivists have tried to determine the property owners and the concept of the archives with the definitions related to the materials that have been acquired by purchase, donation and inheritance ways and they have also determined that the owners of the private archives can be citizen, family and private enterprises (Nalen, 2002, p. 24).

In Article 3 of French Archive Law came into force in 1979 in France, the documents that are public archives and public institutions according to the fulfilled duties and responsibilities without considering the name of the institutions have been defined. All documents, except for public documents specified in Article 3 of the Law, that provide to document the historical research and to meet the management needs and to protect the rights of public and private, or natural and legal person are accepted as private archive (Aren, 1998, p. 526). As it can be understood from these definitions, private archives are discussed within the scope of private ownership in foreign countries.

In the Law No. 3473^a that regulates the archive services in Turkey, there is no “descriptive” article related to the private archives. In Article 3(f) of the Regulation^b on the State Archive Services, the private archives are defined as the archives consisting of similar documents that natural and legal person have except for public institutions and organizations in the content of the paragraph (a)^c of this article. According to this definition, private archive is a collection of documents that are under private person or institutions’ supervision except for public institutions and organizations and have evidence feature, formal qualification and is a document that the State and nation concern. This collection of documents forms a major part of the national archives (Devlet Arşiv Hizmetleri Hakkında Yönetmelik, 1988).

According to National Archive Law Draft submitted to TGNA on April 7th, 2006 (Milli Arşiv Kanun Tasarısı, 2006), the private archive is defined as the archive consisting of the documents that natural and legal person have except for taxpayers in the content of paragraph (a). While there is no “descriptive” article related to the private archives in Law No. 3473, it has been included in National Archive Law Draft as specified in Article 3(f) of the Regulation on the State Archive Services.

One of the important innovations in the National Archive Law Draft is that Article 26 is devoted to the private archives. Pursuant to this Article:

1. Natural and legal person except for taxpayers cannot have sell, purchase, and copy for trading, research, destroy or forge the archive documents belong to the State except for the documents result from the operation and writings carried out with the State.
2. General Coordinate has right of pre-emption in the private archive sale. The sale has been reported to General Coordinate by the seller. The right of pre-emption forfeitures after one month as from the date that the sale has been reported to General Coordinate or General Coordinate reports not using the right of pre-emption (Milli Arşiv Kanun Tasarısı, 2006).

Although a significant improvement has been carried out, it is clear that the concept of the private archive does not have an application area in the universal qualities in the new draft.

^a The law on acceptance by amending the enactment about the Elimination of Documents and Materials without any necessity of its Storage published in the Official Journal on the date of 04/01/1988 was accepted on the date of 28/9/1988.

^b This regulation was issued in accordance with Article 11 of the Law on Acceptance by amending the enactment about Presidency Department no. 3056 with the date of 10/10/1984 and Article 6 of the Elimination of Documents and Materials without any necessity of its Storage no. 316 with the date of 15/3/1988.

^c The archive material in the specified (a) clause: It refers the documents that devolve as historical, political, social, legal and technical value for the future of Turkish Nation, consist as a result of operations of the institutions specified in the Article 1 after thirty years or fifteen years over the last operation date; and it refers the documents or materials such as book, picture, plan, map, project, seal, stamp, photo, film, sound and image record and edition that specify the moral and custom and provide to enlighten the subjects on historical, legal, administrative, military, economy, religion, cultural, or technical in order to document and protect the rights of State and international.

b. Private Archive Types

It is known that the private archives are emphasized and controlled in the framework of the specified rules in the countries that have deep rooted history and the State tradition. Politicians, ambassadors, civil servants who have served at various levels, individuals from family and/or dynasty in these countries have formed their own rich archives. There are important private archives that belong to politicians and businessman in terms of political, economic, historical and cultural heritage.

It is possible to divide the private archives into following types in terms of content and formed documents (Anameriç, 2009, p. 72):

- Notaries Archives
- Political Party Archives
- Non-governmental organization Archives
- Job organizations Archives (Bar associations, Chambers, Associations and Community, Trade unions)
- Foundation Archives
- Individual / Family Archives
- Media-organs Archives
- City Archives

Above-mentioned archive types contain the archive material that has evidentiary, financial, legal and supervisory values related to themselves and other institutions and public institutions. For this reason, the State Archives must know these documents even if they do not have them. It is required to use widely the “oversight” applications in order to provide the transmission of these documents to future generations.

III. Private Archive Applications Abroad

Applications related to the private archives within the framework of archive legislation in Turkey are for purchasing and taking the archive out of the country without permission. Two regulations related to the holding and purchasing the private archives in the National Archive Draft that becomes obsolete and is submitted to TGNA have been regulated, but not descended. Article 7 and 8 of the Regulation on the State Archive Service are related to these subjects except for law and regulation (Devlet Arşiv Hizmetleri Hakkında Yönetmelik, 1988).

According to Article 7 of the Regulation, “natural and legal person except for public and institutions can purchase the archive material from the value that General Coordinate determines”. According to the Article 8, “documents in the private archives or archive material, for whatever reason it is, cannot be exported without permission. Permits are given by Prime Minister at the request of the natural and legal person in order to export this kind of archive materials abroad. However, it is observed that applications from abroad are not limited and different applications for the following subjects are tried. These subjects are:

- Collection policy of Private Archives ,
- Appraisal Criterion for Private Archives
- Storage of Private Archives
- Purchasing of Private Archives
- Supervision and Control of Private Archives

- Bringing the Private Archives into public service
- Privacy of Private Archives (Rukancı, 2009, p. 58)

United Nations Educational, Scientific, and Cultural Organization (UNESCO) has suggested to provide the recording and controlling the private archives in the archive legislation. One of the most remarkable of these suggestions has emphasized that the private archives should be researched by people who have these archives. In the case of not having sufficient sources in order to research the archives, it is advised that the documents are transferred to the National Archive for a short time (Mabbs, Sewell and Broome 1977, p. 60).

When record and control operations of the private archives are analyzed it is observed that they are similar in many countries. However, destruction of the private archives that are saved to owners without permission of the relevant archival authority or transfer the “ownership” to third parties are forbidden in some countries (Nalen, 2002, p. 254).

Although it is extremely important to restrain the private archives by starting from the formation of them, our private archives that form the major part of our cultural heritage are reduced because the value of the private archives cannot be understood. It is required to carry out the regulations in order to transfer the cultural heritage to the next generations and to prevent this destruction.

IV. Reconstruction of the Private Archives

Legal regulations must be actualized in order to reconstruct the private archives. It is impossible to solve the problem without making the required regulations. In this context, we can range the subjects related to the private archives in the National Archive Law under the following headings: ^d

- Within the scope of the State Archive General Coordinate, a unit should be established to conduct the operations related to the private archives and the necessary staff should be assigned.
- The archives of individuals and institutions that have one important role in the life of the nation should be determined by the State Archive General Coordinate.
- These determined archives should be examined by experts and final decision related to the purchase, donation, supervision or control should be reached.
- Archives that are decided to transfer to the next generations should be supplied by the State Archive General Coordinate with purchase or donation. However, the archives that cannot be supplied for various reasons should be provided with models such as supervision, control and support.
- Archives under the control should be put into researchers’ service in the framework of specified rules.
- Archives that have historical, scientific and national values can be checked in the scope of the State

^d Quoted from the postgraduate thesis on “An Evaluation on Archive Regulation and Alternative Archive Regulation Sample” submitted by Ebru İçin in order to prepare the headings related to National Archive Law.

Archive General Coordinate. General Coordinate should focus on the studies that support the voluntary protection.

- The list of archives that private individual and institutions have should be prepared and it should be put into service in the scope of the State Archive General Coordinate.
- The State Archive General Coordinate should make the necessary regulations related to the classification, regulation, protection and access of the private archives.
- People who have transferred their archives to the General Coordinate should have the right of reaching the original record and getting free copy.
- One copy of the archives in the electronic media should be given to the General Coordinate in order to transfer safely to the next generations.
- Privatized archives of the institutions, if the privatized part is below 50%, should be conducted in the framework of the current legislation. If the part is above 50% has been transferred to the private sector it should be evaluated in special archive status and appropriate option from purchase, donation, and supervision should be preferred.

General Coordinate and private archive owners have a number of obligations while the private archives are being reconstructed. These obligations are:

- Private archive owners are obliged to keep the archives in proper conditions and procedures.
- Archives should be classified in accordance with the specified procedures by General Coordinate and the list should be prepared and it should be put into the service in printed and electronic media. One copy of the list should be delivered to General Coordinate in printed or electronic media in order to prevent the data loss.
- The private archive owners should be applied to the city archives or General Coordinate for restoration of damaged or broken archive documents.
- In case some part or all archives are transported to another place, it should be reported to General Coordinate before the transport. To transport the archives without permission should be forbidden.
- General Coordinate should have sufficient financial resources for purchase applications in order to eliminate the gap between the documents and funds.
- During the supervision and control of the private archives, the archives that cannot follow the basis specified by General Coordinate have the right of eminent domain as long as paying the price to the archive owner/ owners.
- The list of the archives should be sent to General Coordinate.
- General Coordinate must be informed at least 45 days ago for the sales with auction.
- After sales, the information and content of the sold document should be reported to General Coordinate in lists.
- General Coordinate should have the first priority in this sale.

- General Coordinate should have the authority to block the sale if there is a drawback in the sales of the archives.
- The archives under the control of General Coordinate should be put into researcher's service within the framework of the current legislation after the results of the operation.
- General Coordinate has the authority to decide the Access to the archives that have confidential and sensitive on foreign affairs, internal affairs, defence policies in a different time zone from other documents.
- The classification and Access of the material in the archives should be transferred to the electronic media as soon as possible and it should be put into researcher's service.
- It should be useful to transfer the materials in the printed media or the electronic media in order to prevent the deterioration of them. However, during the use of materials that are not transferred to the electronic media a copy instead of the original document should be provided to prevent the deterioration.
- The necessary regulations should be made for the researchers in order to get the copy of the document in the case of need.

The implementation of the above mentioned obligations will be an important step to transfer the private archives that have an importance for the State, nation and society to the next generations.

V. Conclusion

Private archive legislation and practices of the countries that have demographic and socio-economic characteristics and different management systems such as France, England, America, Holland, Canada and China in different geographies in our study and the recommendations related to the legal regulations that are the major milestones in the reconstruction of the private archives have been listed on the basis of obtained data. Above-mentioned subjects will provide significant improvements in terms of keeping the private archives under the control from formation to the service of them that are important link between the past and future and are an undeniable part of our cultural heritage.

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