

# Opening or Closing the Archives in Slovenia?\*

Ljuba Dornik Šubelj

In democratic states, public information, information and documents held by public authorities and archival documents held in public archives must, as a general rule, be as accessible as possible to public with the least possible delay<sup>1</sup>. The Council of Europe and the European Union adopted, over the past twenty years, numerous recommendations and directives on democratic access to public information held by public authorities and to public archival documents held in public archives<sup>2</sup>.

In Slovenia, the elimination of special archives, which were partly closed and inaccessible to public and researchers, and among which was the archive of the former State Security Service, began very early; it was practically simultaneous with the process of gaining independence and the emergence of the independent state. Historical Archives of the Central Committee of the League of Communists of Slovenia were incorporated to the Archives of the Republic of Slovenia as early as 1990, following the elections, while Archives of the Institute of the History of the Workers' Movement i.e. Archives of the Institute of Contemporary History and lastly, a part of the Archives of the Ministry of the Interior storing documents belonging to the State Security Service, were incorporated in 1992 and 1998, respectively<sup>3</sup>.

Following the fall of the Berlin Wall and changes occurring in Eastern Europe, a part of which were the ones that took place in our country – namely the dissolution of the Socialist Federal Republic of Yugoslavia and emergence of new states on its territory – special attention was focused on the archives of former political police organisations in the states having changed their political systems and eliminated the single-party state on which all the socialist systems in Europe after 1945 were based. The legislation in this area adopted in the Federal Republic of Germany was comparable to that of many former socialist states and served to them as a role model. An act was adopted concerning documents held by the State Security Police, commonly known as the Stasi, laying down, in five chapters, general and initial provisions, Stasi document records, the use of Stasi documents, constitution of

---

\* The article was presented on a meeting of the Directors of Archives of the Ministries of Foreign Affairs of the EU and EU Institution on June 30<sup>th</sup> 2008 at Brdo, Slovenia as a part of Slovenian Presidency of the EU 2008.

<sup>1</sup> Vladimir Žumer, *Access to Public Data, Information, Documents and Archive Material in the Republic of Slovenia*, "Archives" 26 (2003), 1, p. 13-21 [hereafter, Žumer, *Access*].

<sup>2</sup> Recommendation No. R (2000) 13 of the Committee of Ministers to Member States on a European policy on access to archives.

<sup>3</sup> *Guide to the Records and Collections of the Archives of the Republic of Slovenia*, 1999, 1, p. 57.

the Commission of Inquiry and final provisions. Under this act, laws adopted prior to 8 May 1945 – which is to say before the end of World War Two – were not included in the documentation. The provisions make a very clear distinction between the persons damaged, i.e. those the Stasi collected information on, and Stasi collaborators, official and unofficial (such as informers).

As for Slovenia, after the 1990 elections, and following the changes constituting a preparation for the gaining of independence, the archives of the Ministry of the Interior were established as an independent internal organisational unit within the Ministry in June 1990. Materials collected by the former State Security Service, replaced by the Security and Information Service, and later renamed Slovenian Intelligence Security Agency (SOVA) were gradually transferred to the archives following a Government Resolution, accompanied by handover records<sup>4</sup>. The materials related to the World War Two period were the first to be handed over, followed by those related to post-war political processes and the remaining materials, including personal files<sup>5</sup>. This constitutes a difference with respect to Germany, where World War Two materials are kept by the Western Allies, which seized them after the defeat of Germany (the so-called “trophy” archives). The takeover was gradual and is only now drawing to a close. According to a Government Resolution, SOVA was required to hand over all the materials by 1990, while the handover of Ministry of the Interior materials, i.e. documents concerning public security, as opposed to state security, was not concluded until September 2007.

It should be noted that a substantial part of State Security Service (SSS) materials were destroyed under the special legislation of former Yugoslavia concerning imminent threat of war at the time of crisis events, such as in 1948 (the confrontation with the Inform bureau), 1953 (the Trieste crisis), 1966 (the Brioni plenum – political settlement of accounts with the State Security Service) and 1967 and 1973 (wars in the Middle East), as well as at the time of the invasion of Czechoslovakia by the Warsaw Pact troops in 1968, when a decentralisation of the federal SSS Archives was performed due to a possibility of the intervention spreading to Yugoslavia, and most of the materials were handed over to the Republic SSS centres; there are handover records to attest to this. The last destroying of materials took place immediately before the elections in 1990. In this last case it was mostly materials concerning the so-called internal problems, such as contesters, dissidents, religious communities, etc. that were destroyed. Quantity-wise, around one third of the materials were saved by comparison with 1976; if there were 1000 running metres of them at the time, there are now around 300 running metres. In

---

<sup>4</sup> Ljuba Šubelj Dornik, *Personal Data Protection in Accessing Personal Files of the Former National Security Agency*, “Archives” 30 (2007), 1, p. 83-87 [hereafter, Šubelj, *Protection*].

<sup>5</sup> Idem, *Archives of the Ministry of the Interior of the Republic of Slovenia*, in *Archives and Archival Materials in the Transition Period*. InfoArh information system. 21<sup>st</sup> meeting of the Archival Association of Slovenia, held in Koper, 8 to 10 October 2003, Ljubljana, 2003, p. 76-79.

addition to paper-based materials, there are also those stored on other types of media, such as film tape and microfilm, representing back-up copies. At times, destroyed paper-based materials were preserved on other media.

In Slovenia, a special institute for the study of SSS materials, similar to the aforementioned Institute for the study of Stasi documents in Germany<sup>6</sup>, the Institute for National Remembrance in Poland (and its homonym in Slovakia) and institutes established elsewhere, had not been established until recently, although the need for it was expressed in public discussions. Thus it was only this year, in May 2008, that the Study Centre of National Reconciliation was established within the Ministry of Justice, into which a part of the former Sector for Redressing of Injustices and for National Reconciliation was reshaped.

Likewise, a draft lustration law was rejected in a parliamentary debate in 1997. SSS archival documentation was included in the central state archives ten years ago, and even before that, while it was still kept at the Ministry of the Interior archives, it was open for public use under the legislation; the main intent was for it to be used for legal purposes. When the political system was changed, many measures were taken aimed at remedying damages and redressing injustices committed in the previous system. It was mainly the Denationalisation Act, the Victims of War Violence Act and the Redressing of Injustices Act that imposed a number of obligations to archives. Numerous data required for redressing injustices were to be found, among others, in the affected persons' personal files. Thus the former Archives and Archival Institutions Act<sup>7</sup> was the first Act through which the Government of the Republic of Slovenia was authorised to exceptionally shorten the period of restricted access to materials following a well-founded request by a natural or legal person, and "provided that public interest prevails over the interests to be protected".

The situation in Slovenia as regards the use of and access to archives will be described on the basis of the latest Protection of Documents and Archives and Archival Institutions Act (hereinafter referred to as "PDAAIA"), adopted in 2006<sup>8</sup>.

The Act specifies that public archives shall be accessible for use in archival institutions to any person who has submitted a written request, or shall be available to anyone on the Web<sup>9</sup>. The request for use shall include the name or title of the person and his/her officially assigned identification code, purpose to use the archives and other data necessary to access the archives. Prior to the use of certain archives,

---

<sup>6</sup> The Institute was named the "Gauck Institute" after its first lead commissioner, the Evangelical pastor Joachim Gauck. Its official name is Office of the Federal Commissioner Preserving the Records of the Ministry for State Security of the GDR and it is now headed by Marianne Birthler.

<sup>7</sup> "The Archives and Archival Institutions Act" (Official Journal of the Republic of Slovenia, no. 20/97, and 32/97 – corrigendum).

<sup>8</sup> "Protection of Documents and Archives and Archival Institutions Act" (Official Journal of RS no. 30/2006).

<sup>9</sup> Marjana Križaj, *Access to Public Archives in some European Union States*, "Archives" 30 (2007), 1, p. 71-82 [hereafter, Križaj, *Access*].

the user using archives shall sign a declaration confirming his/her awareness that misuse of confidential or personal data can be sanctioned under the Criminal Law and other regulations and stating that he/she shall use the data only for legal purposes.

The Act does not specify a general period of restricted access to archives, as its point of departure is the principle of availability of archives to all. Exceptions to this rule are specified in Article 65, namely in the first two paragraphs, laying down exceptions for the following:

- Public archives containing confidential data relating to national and public security, defence, international affairs or intelligence and security activities of the State and its economic interests, business and tax secrets, the disclosure of which to an unauthorised person could have detrimental effects for national security, other persons and their interests. These archives shall normally become available for use 40 years after their creation; and

- Public archives containing sensitive personal data (data on racial, national or ethnic origin, political, religious or philosophic beliefs, membership in a political party and trade union, health condition, sex life, entry into or removal from criminal records kept under the Act regulating offences, biometric characteristics, if their use could lead to an individual in relation to any of the above stated conditions. These materials shall become available for use 75 years after their creation, or ten years after the death of the person concerned, provided the date of death is known, and unless otherwise provided by relevant regulations.

The specified periods of restricted access may be exceptionally shortened or extended. This is decided on by the Government and based on the opinion of the Archival Commission<sup>10</sup>.

The third paragraph of Article 65 of the Act specifies access to archives created prior to 17 May 1990, relating to former socio-political organisations (such as the League of Communists of Slovenia, the Socialist Alliance of the Working People, or the Alliance of Socialist Youth of Slovenia), internal affairs authorities (such as the police), judicial authorities (such as courts and prisons) and intelligence and security services. These materials are available without limitations, except for those archives containing sensitive personal data that:

- were acquired with violations of human rights and fundamental freedoms and

- were related to persons who were not public function holders.

In case of any doubt concerning accessibility conditions, decisions are made by the Archival Commission. The latter also decides on shortening periods of restricted access to documents for the purposes of research, and provided that public interest prevails over the interest of persons whose sensitive personal data are contained in the archives.

---

<sup>10</sup> Appointed by the Government. Its members are selected from among public administration, history and archival science experts.

In the contemporary information society, people's personal data are becoming an increasingly valuable and "sensitive" or "vulnerable" possession, and thus cannot be subject to entirely unrestricted collection, transfer and use. Slovenia adopted its first Personal Data Protection Act as far back as 1990. The Act took into consideration the fundamental principles of data protection, which had until then been formed in accordance with the conventions, and after that elaborated in accordance with Article 38 of the Constitution of the Republic of Slovenia and international legal sources. The current result of these processes is the Personal Data Protection Act, which was adopted on 5 August 2004 and came into force on 1 January 2005. With regard to archiving personal data, it sets forth in Article 21 that general provisions of the Act under which personal data are kept until the purpose of their processing has been achieved or fulfilled do not apply to personal data defined as archives under the Archives and Archival Institutions Act<sup>11</sup>.

Particular contrariety between information privacy and public interest features in Article 39 of the Constitution of the Republic of Slovenia, which lays down that, "except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he has a well founded legal interest under law". This human right, which in some cases may be in conflict with the right to protection of personal data or to information privacy, is specified in more detail by the Access to Public Information Act.

The second paragraph of Article 4 of the Access to Public Information Act expressly provides that archives stored by the competent archival institution in the framework of the public archiving service in accordance with the law governing archives is not to be considered as public information<sup>12</sup>.

As we are constantly facing the question of whether to open or close access to documents, what happens in practice is that more documents are closed. We are moved to such action, among others, by the Public Information Access Act itself, based on which applicants can be denied access to public information in as many as twelve different cases. What this means in practice is that more public information is (or may be) withheld from the public than is disclosed to it.

Under Article 6 of the Act, access may be denied if it concerns:

1. information defined as classified under the law governing classified data;
2. information defined as a business secret under the law governing companies;
3. personal information whose disclosure would constitute an infringement of personal data protection under the law governing personal data protection;
4. information in relation to state statistics;

---

<sup>11</sup> Šubelj, *Protection*, p. 84.

<sup>12</sup> The British Information Commissioner claims that applying the public-interest test consists in disclosing not what is **interesting to the public**, but what is **in public interest**.

5. information stored in an archival institution defined as confidential under the law governing archives and archival institutions;

6. information whose disclosure would constitute an infringement of the tax procedure confidentiality under the law governing tax procedure;

7. information in relation to criminal prosecution or misdemeanours procedure;

8. information obtained or drawn up for the purposes of administrative procedure, whose disclosure would prejudice the implementation of such procedure;

9. information obtained or drawn up for the purposes of civil procedure, non-litigious procedure or other court proceedings whose disclosure would prejudice the implementation of such proceedings;

10. information from a document that is in the process of drawing up and is still subject of consultation in a body, and whose disclosure would lead to misunderstanding its contents;

11. information on a natural value inaccessible to public for the purposes of protecting the natural value under the law governing nature conservation;

12. information from a document drawn up in relation to internal operation or activities of a body, whose disclosure would lead to disturbances in the operation or activities of such body.

An immense progress in terms of disclosing and transmitting public information to public is made by the provision of the Act regulating the transmission of public information to the World Wide Web (Internet), laying down that each public authority must transmit the following public information concerning its area of operation to the World Wide Web:

1. consolidated texts of regulations;

2. programmes, strategies, views, opinions, studies and other similar documents;

3. draft regulations, programmes, strategies and other similar documents;

4. all publications and tender documentation in accordance with regulations governing public tenders;

5. information on administrative services;

6. other public information.

Each public authority must hand over public archives to an archival institution no later than 30 years after the creation of the archives, including materials containing personal and sensitive personal and confidential data.

Protection of classified information in Slovenia is regulated by the Classified Information Act, adopted in 2001<sup>13</sup>. Classified information protection concerns the designation, protection, access to and expiry period of confidential documents. An information or document may be classified as confidential if it is so important that its disclosure to unauthorised persons could prejudice the security of the country or its political or economic interests. Such information may concern public security,

---

<sup>13</sup> "Classified Information Act" (Official Journal of RS, no. 87/2001).

defence, foreign affairs and the intelligence and security activities of government agencies of the Republic of Slovenia.

Data, information and documents designated as confidential must be protected in the prescribed manner from the time of their creation to the date of their expiry. A large majority of confidential documents are also marked as permanent archives to be handed over to competent archival institutions while their confidentiality is still in force or upon its expiry<sup>14</sup>. Archival institutions are also obligated to protect various levels of confidentiality for various time periods after handover of confidential materials or materials containing personal data. Under PDAAIA, confidential data regarding national security, international affairs, interior affairs, economic interests or business secrets of the state may be withheld from public for a maximum of 40 years of the creation of materials.

In conclusion, I would like to point out an example of good practices residing in the fact that, in my fifteen years of work with State Security Service materials – or rather, in the ten years that the materials have been stored in the Archives of the Republic of Slovenia, there have only been two cases of complaints made by damaged persons concerning access to their personal files. In one of the cases an inspection procedure was initiated, but in both cases it was found that the Archives did not violate the legislation in force.

---

<sup>14</sup> Žumer, *Access*, p. 17.