

APPRAISAL OF MASS LITIGATION FILES - PRACTICAL EXPERIENCES IN HUNGARY

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Izvirnik v angleščini, izvleček v angleščini in slovenščini, povzetek v slovenščini.

Avtor v svojem prispevku opisuje metode in rezultate dveh projektov Mestnega arhiva Budimpešta, katerih naloga je bila izdelati praktična navodila za valorizacijo sodobnih masovnih pravnih spisov (1970-1990).

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The paper describes the methods and the main results of two projects of Budapest City Archives, the task of which was to elaborate practical guidelines for the appraisal and selection of contemporary mass litigation files (1970s - 1990s).

In the course of preparation of the project implementing a new archives building, Budapest City Archives had to face up with the necessity of re-examination of its appraisal and acquisition policy. The massive extension of the storage capacity¹ has put the takeover of records on large scale newly on the agenda. Earlier, without the real chance of mass acquisition beyond the obligatory ones prescribed by legal regulations, our „outstandings” had been calculated on the basis of these prescriptions. Elaborating conceptions in detail, to „fill up” the repositories with material of real permanent value, we had to realize, that the old record schedules define the „historical value” too vague in many spheres (for example in relation to the records of public administration). At the same time the preservation of lasting value hidden in the mass of judicial and – within this – of litigation records, is not guaranteed, even at the minimum level.²

As far as the cases of civil law are concerned, the case files had to go through a „partial selection” after 10 years, which meant in practice the destruction of all documents of the case except the final decisions (judgements). The files, „castrated” in this way, had to be preserved for another 15 years by the courts. At the end of this deadline, just one (!) percent of the cases of divorce and cases of

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¹ *The inauguration of the new building of Budapest City Archives took place on 16th November 2004. Its principal storage capacity with static shelving (but with built-in accessories for change to mobile shelving in the future) amounts to approximately 50.000 linear meters, almost the double of the quantity of holdings at the end of 2004.*

² *The rules of administration and preservation of court records were regulated by the Instruction of the Ministry of Justice 109/1981. /IK 5./ IM. It was valid until the end of 2002.*

property had to be selected for archival preservation. (The criteria of the selection had to be the „high importance” of the case.) The same time-limits were valid to the criminal files. The difference was, that the records of a few categories of trials, an itemized list of which was given in the ministerial instruction, were assigned for transfer to the archives (mainly the cases of the gravest crimes and of those of political relevance).

We regarded these rules unacceptable as the basis of our acquisition policy in relation to the records of the last decades, mainly for two reasons. First, the value of a case file for historical research doesn't depend solely on the legal classification. Second, the preservation only of those cases, which have been declared to have „high importance” according to fuzzy criteria, can't satisfy the need to document not only some pieces of information, but the context as well. In other words, we have to pay equal attention to informational and evidential value of the records.³ We needn't try to „predict”, what will be „important” for future researchers, if we are able to preserve a sample, which gives a satisfactory basis for analysing the functions, the structure, the policies and the mechanisms of operation of the record-creators, in our case the courts. The preservation of the operational and policy files of the courts can't substitute for a collection of well-selected case files as „evidence” of the functioning of these crucial institutions of state and society. If we take this seriously, we have to refuse those views, wide-spread even among archivists, which regard the big piles of petty causes, mainly at the courts of first instance, just burden for the archival service.

The task of two projects of Budapest City Archives was to translate this point of view into practical guidelines.⁴ We aimed at elaborating recommendations, which can be used nationwide as a model. So the projects were carried out in cooperation with a few county archives. This gave us the opportunity to compare the experiences at the courts of the Capital with those of counties, a big city (Szeged) and smaller towns.⁵ The features of the record creation of jurisdiction in Budapest and the other parts of the country differ from each other not only in some characteristics of the content, but also in the order of magnitude. The court with far the highest number of „clients” in Hungary is the Central District Court of Pest (first instance), which has yearly approximately 25.000 civil and 12.000 criminal cases. The courts of Budapest together produce about 450 linear meter files only on civil law proceedings each year, let alone the criminal ones. These data make it clear, that the requirement of the Archival Act of Hungary⁶, which state, that the archives are obliged to take over all the records, which can be necessary for the protection of the rights of the citizens, is beyond the real possibilities. In civil cases for example each document,

³ As a theoretical basis we used Schellenberg, R. Theodore: *The Appraisal of Modern Public Records. Bulletin of the National Archives, Number 8., Washington D. C., 1956.*

⁴ The project „Appraisal and sampling of civil case files” was carried out in 1999-2000, the project „Appraisal and sampling of criminal court files” in 2002-2003 with the support of the Hungarian Ministry of National Cultural Heritage. The leader of the projects was István Kenyeres.

⁵ In the project on civil cases took part our colleagues from the Csongrád County Archives. They analyzed the records of the County Court, Szeged City Court, Szentes Town Court and Csongrád Town Court. In the framework of the second project they scrutinized the criminal files of the Town Courts of Szentes and Csongrád. Two more counties joined us for this task: the Nógrád County Archives dealt with the records of Nógrád County Court and the Town Court of Balassagyarmat; Zala County Archives sampled the records of the Town Court of Zalaegerszeg.

⁶ Act LXVI. of 1995 on Public Records, Public Archives, and the Protection of Private Archives. (Full text in English is available: www.natarch.hu.)

which contains resolutions on the status of a person or on proprietary rights, should be appraised as having permanent (archival) value. Our research confirmed, that if we strived for safety regarding the preservation all files with historical or long-lasting legal value, it would mean the archiving of at least 30-40 % of the civil cases. The possibilities of selection of documents for destruction *within* these files would deserve the highest precaution, as it is not exceptional, if just a notice of receipt means an important legal proof. We'll never have the capacity for such extensive preservation. That's why we had to take the view, that in the process of appraisal and assigning files for transfer to the archives, we have to give clear priority to the historical value over the more vaguely defined „permanent value” (which encompasses historical, legal and administrative aspects).⁷

After surveying the methods and recommendations described in the archival literature, and confronting these with our earlier experiences, we took the conclusion, that the procedures, which are most frequently proposed, are not satisfactory for our task. So we dismissed the idea to preserve some segments in their entirety (to represent drops in the ocean): for example some „sample years” or the records of selected courts with different territorial authority. The result of our research fully confirmed our assumption, that the greatest part of documents archived in this way would have no value for research, while a lot of really valuable files would be destructed in the non-selected segments, with the active cooperation of the archives. Beyond that, the possibilities of generalization on the basis of the judicial practice of one year or one territorial segment are very limited, so the selection, whichever method we use, can be only arbitrary.

Another „popular” idea is to preserve all the judgements, because it is assumed, that they give us information about the „essence” of all cases in the reasons. There were adherents of this view even in our project team, although the research practice in the massive series of judgements, which are already preserved in our archives, disprove this assumption. The judgements are usually edited quite formally in most cases, and what's more important, they describe only those facts of the case, which were taken into attention by the final decision. So they are usually far from being satisfactory for historical reconstruction. The resolutions of the higher instances most frequently just refer to the judgements of the first instance, and contain only what they accept or alter in that.

The litigation files belong to those types of mass records which are not adequate for sampling in the sense of strict statistical representativity, as they lack the necessary level of homogeneity and formality of the content and procedures.⁸

Our starting point was, that instead of strict statistical sampling we have to combine the methods of random selection on criteria defined previously and qualitative selection, that means the identification of those files, which have historical value „on their own right” (because of their content, high informational value or unique features of the procedure). Both types of selection have to be carried out on the basis of the whole material, not only from some chosen parts of it.

⁷ *In view of legal and administrative interest, it could be advisable to determine longer preservation periods for some categories of documents at the creators.*

⁸ *IRMTRAUT EDER-STEIN: Aktenstruktur und Samplebildung. Überlegungen zur Archivierung von massenhaft anfallenden Einzelfallakten am Beispiel von Akten der Justiz. In: Der Archivar 45 (1992). p. 561-571.; TERRY COOK: „Many are called, but few are chosen.”: Appraisal guidelines for sampling and selecting case files. In: Archivaria, 32. (Summer 1991) p. 33-35.*

The method of random selection has to adjust to the original order. The litigation files are registered and stored according to registry numbers, recommencing each year. (At the courts with high number of cases refer the registry numbers in principle to the legal category of the case, but the scrutiny of the finding aids confirmed, that they are not reliable in this aspect, so this can't serve as a ground for selection.). The basis of the random selection has to be the registry number. We decided to pick out every tenth case files (each with a number ending of 5). If the file is not stored under the original registry number (because of enclosing to another file, re-registration, sending to another court etc.), we don't substitute it with another one. In this way random selection results the preservation of less than 10 percent of the cases.

The key point was to answer two questions: (1) whether it is possible to define those categories of cases, by which random selection produces a satisfactory sample, without the danger of destructing historical value; (2) can we find adequate criteria for easy and rapid identification of files having historical value in a vast file-series organized only according to the registry number?

To answer these questions, we had to scrutinize case files en masse, without any preconceptions, in which categories can we reckon with „great significance”. The quantity of this research sample didn't have to correspond to any given percentage of the whole, but had to be large enough to allow general consequences. In the course of the two projects the teams appraised approximately 17.000 files, those of civil and criminal cases in nearly equal proportion (8500-8500).⁹ For the choice of the researched courts and years it was determinant, where can we find complete file-series still untouched. In the framework of the project on civil case files we concentrated on the 1970s - 1980s. As far as the criminal files are concerned, we strived to compare the periods before and after the fall of communism, and chose the sample years from the 1980s and 1990s (where it was possible 1985 and 1995).

The basic data and the appraisal of each case file has been processed in MS-Excel tables, which had the following structure for the criminal files:

1. Court
2. Year
3. Registry number
4. Legal category (according to the registration)
5. Crime/Delict/Other (nullity, sum-total of sentences etc.)
6. First instance/Second instance
7. Appraisal by code (1 = preservation, 2 = destruction)
8. Appraisal by text (reason and comments)

Fields 9-12 were to be filled only in the records of the files assigned for preservation:

9. Total size (number of pages)

⁹ *The proportion of the appraised files to the total means high differences between the various courts. In the case of small town courts for example, it was possible to look through all the cases of the chosen years. At the courts of first instance in Budapest we analyzed usually 1000 cases of each sample year.*

10. Duplicates (types of documents)
11. Duplicates (number of pages)
12. Ballast (types of documents that can be removed)
13. Ballast (number of pages)

A file could be assigned for preservation for three reasons: 1) random selection (every tenth files); 2) appraised by the archivist as having historical value „on its own”; 3) the preservation is legally compulsory. (Overlapping is naturally possible between these categories.)

The analysis of this data-base confirmed our assumption, that considerable number of files with relatively „law” legal classification, the destruction of which has been allowed in entirety according to the valid regulation, have historical value. On the other hand we were able to identify a long list of case categories, in which all the files assigned for preservation had been „picked up” by random selection, so this method seems to be satisfactory.¹⁰ These are the really mass categories, which amount to the greater part of the quantity of the whole record-production. In the knowledge of this fact we can stress again, how fruitless is to preserve „sample years” in totality.

On the basis of the data-base we divided the legal case-categories into three groups (the first-instance cases of the lower and higher courts separately): A) random selection is enough; B) selection is proposed through the appraisal of each file; C) transfer to the archives without any selection (cases above a „threshold of significance”).

The legal categories are written on the file-cover, so the making of the random selection and the separation of the files belonging to the categories B and C doesn't mean serious difficulties for the employees of the courts. Thus the appraisal of the individual files by the archivist is necessary only in category B. This category encompasses, among the civil cases for example those relating to properties with high value; divorce, inheritance, expropriation, trespass, etc.; among the criminal ones robbery, burglary, smuggling, fraud, receiving of stolen goods, libel (public), slander (public), malpractice, theft and embezzlement as crime, blackmail, bribery, etc. Not only the belonging to a given legal category in itself can qualify a file to category B, but also some types of interesting proof attachments (photos, plans, studies of living conditions, some types of expert opinions etc.).¹¹

I have to add, that in the appraisal of the files of category B no uniform approach has been achieved among the members of the project teams, and it is doubtful, that it can be achieved at all. This fact can partly explain the differences between the proportion of the case files appraised as having archival value „for their own”. In the case of criminal files at the courts of first instance was this proportion

¹⁰ Among the civil cases for example the causes on payment of purchase price, payment of entrepreneurial charges, use of flats and payment of rents, arrears of alimony for children, etc. belong to this category. Among the criminal cases we can list drunken driving, assault, traffic accidents, theft and embezzlement as delicts, etc.

¹¹ For example the suits of divorce are qualified to category B, in the following cases: the file contains psychologist expert-opinion(s); it contains detailed reports on the properties of the couple (persons) and their division; the application has been refused by the court; reopening of the case took place; one of the parties raised an objection because of bias; foreign citizens have a role in the case; one or more of the persons play important public role.

in Budapest 4,8 % of the whole research sample, while it was 31,9 % in the countryside. The explanation of this deviation can be found not only in diverse approaches and attitudes, but in the different characteristics and local significance of the material of the large capital city and smaller towns as well.

All in all our conclusion was, that usually 5-15 % of the cases can be identified as having potential historical value by thorough appraisal. Together with the random selection it results the transfer of 15-25 % of the cases to the archives. (In the case of the courts of first instance in Budapest, with far the greatest number of cases, this proportion proved to be much less: through individual appraisal about 5 %, random selection produces here - because of the overlapping and the frequency of attachments - no more than 7-8 %, together less than 15 %.) This quantity can really be stored and managed by the archives. It worth to mention, that at the courts of first instance in Budapest, we appraised 162 files to have historical value. According to the valid legal regulation only two (!) of them should have been transferred to the archives.

This proportion of the cases means much less in the size of the holdings. In the next step we analysed the possibilities of selection for destruction *within* the files with archival value. For the civil causes we were able to draw up a guide, which makes it possible, to select those types of documents, which are usually not necessary for the historical reconstruction of the case, easily and quite mechanically. This can be carried out by the employees of the courts, and the result can be the reduction of the size of the file with even 30-40 % in many cases.

The internal selection of the criminal files deserves more caution. These documents represent the procedures of criminal investigation and penalty mechanism. The operation of such crucial actors, as the police and the public prosecution is documented only here, because most of their case files are assigned for destruction. It doesn't mean, that it is not recommended to remove the duplicates and some types of typical „ballast” documents, but the proportion of these ones is far less than in the civil case files.

The „heavy” cases, which belong to the competence of higher courts (Court of Capital Budapest and county courts) at first instance, mean a separate problem. We were able to divide their files of the civil cases into the categories A, B or C. But among the criminal files it has been proved to be impossible to define a circle of legal categories, in which we don't have to reckon with historical value at all. This being so, only the individual appraisal of the files can be proposed. If the archives don't have the capacity for that, the whole has to be preserved.

The results of our appraisal has been accepted on the side of jurisdiction. The Central District Courts of Pest and Buda, the two courts of first instance with far the highest numbers of cases in Hungary, already pursue the selection of their civil case files on the basis of our new guidelines. This shows, that the creators are open to professionally well-based selection procedures, even if it means considerable extra-work for them.

We have to add to important points. Our proposals for the classification of the legal categories in view of selection procedures (A, B, C categories), give only some orientation to other archives, but it has to be always adjusted to local peculiarities. Second, these proposals have to be re-examined periodically, because of the changes in the practice of jurisdiction and its social background (five-year periods seem to be appropriate.)

POVZETEK

VALORIZACIJA MASOVNIH PRAVDNIH SPISOV

Avtor v svojem prispevku opisuje metode in rezultate dveh projektov Mestnega arhiva Budimpešta, katerih naloga je bila izdelati praktična navodila za valorizacijo sodobnih masovnih pravnih spisov (1970-1990). Projekte so izvedli v sodelovanju z nekaterimi županijskimi arhivi, pri čemer so lahko primerjali izkušnje sodišč v glavnem mestu z izkušnjami manjših županijskih in mestnih sodišč. Pridobljene izkušnje so v nasprotju s široko razširjeno miselnostjo, da je dovolj, če ohranimo samo določene segmente gradiva (izbrano leto v izbranem sodišču), ali pa da ohranimo vse sodbe, kar predstavlja določen kompromis. Potrebno je kombinirati metodo vzorčnega izbora s kvalitativno izbiro. Obe je potrebno izvesti iz celotnega gradiva, ne samo iz posameznih delov. Izkazalo se je, da je to mogoče storiti učinkovito na podlagi klasifikacije pravnih kategorij in z različnimi načini selekcije, ki jo te kategorije zahtevajo. Na podlagi valorizacije gradiva na sodiščih, je bil naš zaključek, da ima 15-25 % zadev potencialno historično vrednost. Skupaj z vzorčnim izborom je bilo v arhiv prevzetega 15-25 % gradiva. S pomočjo navodil, ki so bila izdelana za interno selekcijo civilnih zadev, se lahko v veliko primerih obseg spisov zmanjša celo za 30-40 %. Izločanje posameznih kazenskih zadev pa zahteva veliko večjo mero previdnosti.

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