

## Some Of The Legal Aspects Of Succession In Respect Of State Archives

**KHAKIMOV RAVSHAN TULKUNOVICH**

Candidate of Legal Sciences,

Chairman of the Uzbek Association of International law

**Abstract:** author analysis the problems of succession in respect of state archives are considered in accordance with the Vienna Convention on succession of States in respect of state property, public debts and state archives of 1983 and contemporary problems of states succession in international law, elaboration of recommendations to improve legislation in force both on international and national levels etc.

In legal sciences of the Republic of Uzbekistan it was the first attempt undertaken to explore the contemporary trends in theory and practices regarding the settlement of modern issues of the succession of states and its application in international law. The example of Uzbekistan was also analyzed.

**Key words:** state assets, archives, debts, agreements, predecessor state, successor state, interested state, international organization, the moment of succession, new independent state, secession, reservation, states' succession, notification, transfer, cession, affirmation, property, third state, ratification.

In international law, the problems of succession in respect of state archives are considered in accordance with the Vienna Convention on succession of States in respect of state property, public debts and state archives of 1983<sup>1</sup>, as well as the Convention on measures to prohibit and prevent the import, export and transfer of ownership of cultural property of November 14, 1970 and other normative document<sup>2</sup>.

Referring to the importance of archives at the time, the UNESCO expert Advisory group on the preparation of a report on the possibility of transferring documents from archives formed on property in particular. the territories of other countries (1976) noted that: "Archives are an integral part of the heritage of any nation. Not only do they document the historical, cultural and economic development of the country and reflect its national identity, but they are also the

<sup>1</sup> The Vienna Convention on succession of States in respect of state property, state functions is necessary for vital debts and state archives. // OFI - ties of any state, including as special reports of UN Conferences on state succession in relation to state property, public debts and state archives. Vienna, 1 March - 8 April 1983, T. P. New York.: UN, 1996. - 166 p.

<sup>2</sup> UNESCO. Acts of the General conference, 16th session of the Resolution . -P. 146 - 158.

main source of documentation necessary to confirm the rights of individual citizens<sup>3</sup>."

The 1983 Convention, in part III, in articles 19 to 31, deals with the succession of States in respect of the state archives of the predecessor state. State archives are one of the types of state property in General and one of the types of movable state property in particular. State archives, by virtue of their nature, content and functions, are necessary for the functioning of any state, including both the predecessor state and the successor state(s). State archives are necessary for the management of society, making it possible to conduct public Affairs, at the same time they are a repository of information about the history of peoples, countries and people in General.

State archives cannot be divided or dismembered, but their peculiarity is that their constituent documents can be relatively easily and quickly reproduced in modern conditions. This serves the mutual interests of the States concerned, in particular the predecessor and successor States or the successor States. Given the particularities of state archives as a form of state property, the Commission noted the importance of close cooperation among States in the settlement of disputes, taking into account, in particular, the relevant recommendations of international organizations such as UNESCO, which reflect the current requirements of States with regard to their rights to archives and their cultural heritage. It should be the responsibility of the predecessor state and the successor state to negotiate in good faith and with a lack of determination to find a satisfactory solution to such disputes<sup>4</sup>.

The Director-General of UNESCO stated: "Since the patrimonial nature of archives as state property derives from the sovereignty of the state itself, the problems related to the right of ownership of state archives and their transition are fundamentally legal. Therefore, such problems must first be resolved through

---

<sup>3</sup> UNESCO, "Final report of the Advisory group on the preparation of a report on the possibility of transferring documents from archives established in other countries" (CC/76/WS/9), p. 2. The meeting was held in cooperation with the International Council on archives.

<sup>4</sup> Document A/CN.4/322 and Add. 1 and 2; UNESCO, Records of the General Conference, 18 th Session, Resolutions 1974, th p. 68 et seq. , 20 c/102, 1978, paras. 18-19; and UNESCO Records of the General Conference, 20 th Session, Resolutions, 1978, pp. 92-93. See also Year book of the ILC, 1979, vol. II, Pt. 1, pp. 78-80. Note in addition the call for a New International Cultural Order, see e. g. Bedjaoui, Towards a New International Economic Order, 1979, pp. 79 et seq. and 245 et seq. and General Assembly Resolutions 3026 (XXVIII); 3187 (XXVIII); 3391 (XXX) and 31 /40.

bilateral and multilateral negotiations and agreements between the States concerned<sup>5</sup>."

Uzbekistan currently has a developed system consisting of 102 state archives, the current activities of which are coordinated by the National Agency "uzarkhiv" under the Cabinet of Ministers<sup>6</sup>.

The law of the Republic of Uzbekistan "On archives" in article 2 defines "archive" as a set of archival documents, as well as archival institution or structural division of an enterprise, institution or organization that receives, stores and uses archival documents. The situation is similar in the neighbouring States of Central Asia.

The concept of state archives is given for the purposes of succession, where it refers primarily to state archives, i.e., all documentation produced or acquired by the state (including through the purchase from its own or foreign natural or legal persons or as a result of acts of donation, inheritance, etc.) and became, under domestic law, the property of that predecessor state. But it is not just the property of the state, it is a special archival property, which is stored by the state as archives for various purposes. The preservation of written sources is the basis for the formation of state archives, but the criterion of the material form of the object and even the criterion of its origin also play a role in its classification as archival documents.

Archival documents can be engravings, drawings and plans that do not have any "written" signs. Objects of numismatic value are sometimes an integral part of archives. It is not only about old paper money, samples or matrices of banknotes or stamps, even coins are stored in national archives or libraries. Iconographic documents, which are usually kept in museums, are sometimes kept in national archival institutions, most often because they belong to the archives. Iconographic documents relating to eminent persons or political events are classified and stored as national archives. This is the case in the United Kingdom of great Britain and Northern Ireland, where the Office of the state archives has a collection of iconographic documents as well as a large number of technical

<sup>5</sup> UNESCO. Culture and future. - Paris. 1986. – 67 p.

<sup>6</sup> Mutalov B. On mutual recognition of rights and regulation of property relations by the CIS member States // J. Economy and law. - Tashkent, 1999. - N: 11. -12. - C. 135-137; Khakimov R. T. Questions of succession in relation to the state archives // Zh. Economy and law. - Tashkent, 1997. - N: 4. - P. 84-86; He same. National heritage and international law // J. Vestnik KazGU. - Almaty, 1999. - No 1-2. - P. 91-95; State archives in the mirror of international law. Right. Law - Tashkent, 2000. - N: 2. - P. 70 - 74; Problems of succession of States in international law. Monograph. - Tashkent: "Phase", 2008. - 240 p.; International law and state property // etc.

drawings from the Patent office library; in Italy, the Central state archive holds photographs of political, scientific and Church figures; and in Argentina, the same holds an Artistic archive. Some sound documents and films are considered by the legislation of a number of countries (France, Sweden, Czech Republic) as archival materials, etc.

The law of the Republic of Uzbekistan "On archives" in article 2 refers to archival documents text, handwritten machine-readable documents, sound recordings, films, photographs, photographic films, drawings, diagrams, maps, as well as records on various tangible media having archival significance after their recognition as such on the basis of the relevant expertise provided by law. Expression.« ..documents of any kind and duration..."covers documents of any subject: diplomatic, political, administrative, military, civil, Church, historical, geographical, legislative, judicial, financial, tax, cadastral, etc; of any nature: handwritten or printed documents, drawings, photographs, their originals or copies, etc; of any material: paper, parchment, stone, wood, ivory, photographic film, wax, etc; and any accessories, regardless of whether they are part of the collection or not.

At the same time, it should be noted that the expression "...documents of any age and kind... it does not cover art objects that may also have Cultural And historical value. The succession of Such items falls within the scope of the succession of state property, or in General it may be a matter of their transfer by agreement between the States concerned, regardless of the problem of succession<sup>7</sup>.

It should also be noted that there is no clear distinction between categories such as "archives" and "library collections". In the composition of the archives sometimes distinguish administrative, historical and cultural archives.

So, for example, the Agreement between Italy and Yugoslavia of 23 December 1950<sup>8</sup>, in article 2 it was provided that under "administrative archives and documents" are documents of the Central authorities and local public administrative bodies, in particular, is:

---

<sup>7</sup> Document A/CONF. 117/4 II. - P. 38.

<sup>8</sup> On the division of archives and documents of administrative nature or of historical interest relating to the territories transferred in accordance with the Peace Treaty of 1947."

- documents such as: cadastral registers, maps and plans; drawings, drawings, projects, statistical and other similar documents of technical bodies related, inter alia, to public works, Railways, mines, public waterways, ports and shipyards;
- documents of interest to the whole or part of the population, such as civil status records, statistics, registers or other documentation of diplomas or certificates of professional suitability for certain types of work;
- documents relating to certain types of property, situations or private legal relations, such as notarial acts, court cases, including court liens in the form of money and other valuables.

The purpose of the term "archive" is to cover all archives that belonged to the territory in question, regardless of its political status or ownership. Historical archives are not the archives of the predecessor state, but of the territory itself, which collected them throughout history or acquired them at its own expense or in any way.

Unlike any question of the succession of States, they must move to a new independent state if they are still in its territory at the time of independence, or may be claimed by it if they have been removed from its territory by a colonial power<sup>9</sup>.

At the same time, it should be said that historical archives and other cultural values were exported from the former dependent territories not only by the metropolis, but also by representatives of other States, as well as by individuals<sup>10</sup>.

The above-mentioned shows quite convincingly how difficult it is to concretize the concept of "state archives" and how important they are for the life of the modern state and its population. Based on the above, the "state archives" could be classified according to:

(a) topics: administrative, private, cultural, literary, historical, iconographic, ecclesiastical, political, diplomatic, international, geographical, legislative, judicial, financial, cadastral, tax, etc;

b) the form: on handwritten, printed, drawings, photos, their originals or copies, etc;

---

<sup>9</sup> Documents A/CONF. 117/4, p. 5.

<sup>10</sup> Khakimov R. T. National heritage and international law. Vestnik KazNU. Series International relations and international law. - Almaty, 1997. - No 1-2. - P. 91-95.

c) material of manufacture: paper, parchment, stone, wood, ivory, wax, photographic film etc.;

d) accessories: whether they are part of the collection or not.

Any archival Fund is a single whole, and its value lies in the unity and interconnection of its constituent materials. However, how exactly to preserve the integrity of a particular Fund in the case of the succession of state archives seems to be a difficult task to resolve, since not all archival units appear to be reproducible and sometimes appear to have genuine value.

At one time, the Director-General of UNESCO, Amadou Mukhtar Mbou, speaking with the appeal "For the return of the irreplaceable cultural heritage to those who created it", said that: "to Return any work of art or document to the country that created it - it means to allow people to restore part of their memory and their identity, it means to present the evidence that with mutual respect between peoples there is always a long dialogue of civilization that determines the history of the world"<sup>11</sup>.

It should be noted that in this area there is a trend towards the reunification of cultural ensembles, the transfer of certain parts of cultural values in the country of the ensemble and it is a positive fact of cooperation of States in the preservation, including the relative - but such specific property, which are the state archives.

Uzbekistan and the problems of succession to the state archives of the predecessor state. The main international legal documents regulating the problems of succession in respect of state archives for Uzbekistan were: the Vienna conventions of 1969<sup>12</sup>, 1978<sup>13</sup>, 1983<sup>14</sup>, the Convention "On measures to prohibit and prevent the import, export and transfer of ownership of cultural property" of November 14, 1970, and etc<sup>15</sup>.

---

<sup>11</sup> UNESCO Courier, 31st edition, 1978, August. - P. 4-5.

<sup>12</sup> Vienna Convention on the law of treaties of 23 may 1969 // Current international law. In 3 t. // Comp. Yu. M. Kolosov., E. S. Krivchikova. Vol.1. - Moscow: MNIMP, 1996. P. 343 -372.

<sup>13</sup> Vienna Convention on succession of States in respect of treaties of 23 August 1978 // Current international law. In 3 t. // Comp. Yu. M. Kolosov., E. S. Krivchikova. Vol.1. - Moscow: MNIMP, 1996. P. 433-457.

<sup>14</sup> Vienna Convention on the succession of States in respect of state property, public debts and public archives. // Official records of the UN Conferences on the question of succession of States in respect of state property, state debts and state archives. Vienna, 1 March - 8 April 1983, T. P. - new York.: UN, 1996. - 166 p. UNESCO. Acts of the General conference, 16th session. Resolutions. - P. 146-158. Vienna Convention on the succession of States in relation to state property, public debts and public archives. // Official records of the UN Conferences on the question of succession of States in respect of state property, state debts and state archives. Vienna, 1 March - 8 April 1983, T. P. - new York.: UN, 1996. - 166 p.

<sup>15</sup> UNESCO. Acts of the General conference, 16th session. Resolutions. - P. 146-158.

Within the CIS, more than 20 General agreements on various issues of state succession were concluded in 1991-92, including including in relation to the state archives, among which the main ones are:

- Agreement "On the return of cultural and historical values to the States of their origin" of February 14, 1992;
- Agreement "On succession in respect of the state archives of the former USSR" of July 6, 1992.

Legal sources are also decisions, recommendations, written protocols, adopted within the framework of the CIS, among which:

- Terms of reference and Rules of procedure;
- Decision N: 3 of the Commission of Plenipotentiaries of the CIS member States on the establishment of a group of experts to prepare proposals and develop criteria for resolving issues related to succession in respect of state archives of 2 April 1992;
- Protocol decision "On the activities of The Commission on succession in respect of contracts of mutual interest of state property, state archives of the former USSR" of may 15, 1992;
- Decision "On the activities of the Commission to consider a set of issues related to succession in respect of contracts of mutual interest of state property, state archives, Debts and assets of the former USSR" dated July 6, 1992;
- In the framework of the CIS a Protocol of the Meeting of heads of state (14 Feb 1992) the foreign Ministers of States parties was requested to prepare a document on the succession of treaties of all property, state archives, debts and assets of the former Union of SSR for consideration of the heads of States - participants of the Commonwealth on 20 March 1992. in Kiev.

At the national level, the succession of state archives is regulated on the basis of:

The Constitution of the Republic of Uzbekistan of December 8, 1992 with amendments<sup>16</sup> and additions, laws<sup>17</sup>, resolutions of the Cabinet of Ministers of the

<sup>16</sup> Constitution Of The Republic Of Uzbekistan. - T: Uzbeki - Stan. 2017. - 40 p.

<sup>17</sup> the Civil code of the Republic of Uzbekistan. - Vol.: Ministry of justice of the Republic of Uzbekistan, 2003. - 477c; Law of the Republic of Uzbekistan "On international treaties" of 22 December 1995 // Vedomosti of the Oliy Majlis of the Republic of Uzbekistan. - vol.: 1995 - N: 12. - P. 175-187; Law of the Republic of Uzbekistan "On export and import of cultural values" of August 29, 1998 // Vedomosti Oliy Majlis of the Republic of Uzbekistan. - T,: 1997 - 9. - P. 276-283; Law of the Republic of Uzbekistan "On archives" of April 15, 1999 // Vedomosti Oliy Majlis of

Republic of Uzbekistan<sup>18</sup>, as well as multilateral and bilateral treaties. Uzbekistan currently has a developed system consisting of 102 state archives, the current activities of which are coordinated by The national Agency "Uzarkhiv" under the Cabinet of Ministers.

One of the problems that continues to remain among the CIS member States is the succession to the state archives of the former USSR.

The 1983 Convention deals with the issue of state succession in respect of state archives separately in Part III, entitled "State archives". This is explained, according to M. M. Avakov (Russia), by the great specificity of this problem<sup>19</sup>.

B.M. Klimenko (Russia) classifies archives as a kind of state property<sup>20</sup>.

M.M. Avakov notes that there are two criteria that documents must meet in order to be considered as such<sup>21</sup>:

- a) they must, in accordance with domestic law, belong to the state;
- b) they must be deposited with the state.

The provisions of the 1983 Convention govern the transfer of archives in all categories of state succession. This is most easily the case when the archives of the predecessor States are transferred to the successor state (article 20).

According to M.M. Avakov and M. Boguslavsky (Russia), in the categories of transfer of part of the territory, separation of part of the territory, division of the state, a number of provisions apply in cases when:

1. The predecessor state shall transmit to the successor state part of its archives, which:

- a) necessary for the normal administration of the territory subject to state succession ("administrative archives»);

---

the Republic of Uzbekistan, 1999 - 4. - C. 190-194; Law of the Republic of Uzbekistan "On archives" of June 15, 2010 // Vedomosti Oliy Majlis of the Republic of Uzbekistan, 1999 - N2 4. -C. 190-194 et al.

<sup>18</sup> Resolution of the Cabinet of Ministers of the Republic of Uzbekistan N: 482 "On approval of normative documents on the archive case" of October 30, 1999 // SOBR. resolutions of the government of the Republic of Uzbekistan. - Vol.: 1999. - N2 10. - P. 82-91; etc.

<sup>19</sup> Avakov M. M. Succession of the liberated States. - Moscow: International relations, 1983. -P. 146-152.

<sup>20</sup> Klimenko B. M. Problems of succession on the territory of the former USSR // Moscow journal of international law. - Moscow, 1992. - N: 1. - P. 19.

<sup>21</sup> Avakov M. M. New independent States and problems of succession. Diplomatic Bulletin. Year 1984. - Moscow: International relations, 1985. - P. 205.

b) relate exclusively and mainly to the territory which is the object of the succession of States ("historical archives").

2. The predecessor state shall provide the successor state with reliable information in its state archives relating to titles or necessary to clarify the meaning of the documents transmitted.

3. The predecessor state and the successor state shall provide each other (at the expense of the party concerned) with adequate reproduction of the archives relating to the interests of the transferred territory.

4. Agreements concluded between the predecessor state and the successor state, including with the newly independent state, with respect to the state archives of the predecessor state, shall not prejudice the right of the peoples of those States to development, to information on their history and to their cultural heritage (art. 23, para. 7; art. 30, para. 3; art. 31, para. 4).

The 1983 Convention served as the basis for the signing of the Agreement "On succession to the state archives of the former USSR" of July 6, 1992.

It should be noted that before the signing of the Agreement, a great deal of work was done by a group of experts of the CIS member States to prepare proposals, including the development of criteria for resolving issues related to succession in respect of state archives.

With regard to the analysis of the articles of the Agreement on succession in respect of the state archives of the former USSR, we note that the preamble refers to the need to define a common approach to address this issue, while the importance is attached to the creation of full archival funds of the States parties.

This, in article 1 of the Agreement, the parties establish the principle of integrity and indivisibility of funds stored in state archives located outside the territories of the States concerned. However, States parties do not claim ownership of these sets of documentary materials.

According to article 2 of the Agreement, the parties mutually recognize the transition to their jurisdiction of state archives and other archives of the Union level, including sectoral archival funds of the former USSR, located on their territory, carried out in accordance with the legislation.

At the same time, article 3 of the Agreement States that the parties have the right to return those funds that were formed on their territory and at different times were outside them.

Article 4 of the Agreement States that if it is not possible to physically separate a set of documents, each of the parties has the right to access and obtain the necessary copies of archival documents, while the official representatives of the state archival services are provided with the most favorable conditions for work. Further, according to article 5 of the Agreement, it is established that representatives of the state archival services of the parties shall hold regular consultations on a multilateral and bilateral basis.

The provisions of article 6 of the Agreement define the provisions on access by the parties to the documents of their state archives for researchers. Of particular social importance are the provisions of article 7, where the parties recognize the legal force of archival certificates in the territory of the CIS.

According to article 8 of the Agreement, the parties agreed that in cases where archival documents affect the interests of another state or CIS member States, the parties concerned shall take additional concerted measures to use and ensure the safety of these documents and to prevent their destruction.

Article 9 of the Agreement establishes issues relating to the return of archival documents, the exchange of copies and the payment for the provision of copies of documents, with the proviso that in each case the problems should be resolved on the basis of a bilateral agreement.

Article 10 of the Agreement deals with the transfer of the right of the parties to use archival documents affecting the interests of the other party, foreign States, legal entities or individuals.

Analyzing the above articles, we can draw a number of conclusions. All successor States, as well as the predecessor state, are interested in archival materials. But, on the other hand, it is necessary to take into account the fact that the presence of many successors complicates the task of solving the problem of succession in relation to the state archives of the former USSR.

As M.M. Avakov and M. Boguslavsky (Russia) note, archives, owing to the character, as a rule, cannot be divided or dismembered. However, unlike other

types of property, they can be reproduced, especially in connection with the spread of modern technology.

In our view, one of the most appropriate approaches to solving the problem of succession to the state archives of the former USSR would be the transfer of state archives to the CIS member States that are directly related to it in terms of territory or administration. This approach could be implemented both at the multilateral and more effectively on a bilateral basis, when:

- public records of a General nature could be kept, based on the principle of "common heritage", Russia as the successor state of the Soviet Union and be available for the countries-participants of the CIS;

- state archives that have a direct or other territorial relation to a state party to the CIS could be reproduced and transferred to the successor state;

- return to the successor state of a number of funds that were formed in its territory and for various reasons were at different times outside it. This would also meet the provisions of the Agreement "On the rotation of cultural and historical values of the right of States of origin" of February 14, 1992 and was generally accepted international standards.

For example, in the United States, the CIA (Central intelligence Agency) has a special unit, whose functions are to search for and identify the owners of discovered cultural property, as well as ways to return them to their countries of origin.

In this regard, it would be desirable to establish in Uzbekistan a permanent National Council for archives and cultural heritage, which would be endowed with broad administrative powers, sufficient material and technical support, the possibility of attracting experts, institutions, including foreign ones, to search for and determine the status of inventories of archival and cultural funds, study them, prepare draft proposals for the conclusion of multilateral and bilateral agreements, as well as legislative projects.

For more effective cooperation it is necessary to conclude:

- bilateral and multilateral agreements on archival activities and the return of cultural and historical property to the States of origin on the basis of international and domestic law;

- in our view, agreements on a bilateral and multilateral basis should enshrine the universally recognized principle of pacta sunt servanda (treaties should be enforced);
- it would be necessary to recognize private archives and other values of historical, cultural and other significance as national property and to take under the protection of the state;
- unification of CIS legislation on archives would help to minimize contradictions and inconsistencies;
- it would be desirable to use the world experience in the field of archives, as well as the knowledge of historians, archivists, lawyers and other experts;
- special attention should be paid to the work of archive workers, their technical equipment, storage and construction of modern archive buildings, training of highly qualified personnel of art workers;
- it is necessary to work actively in museums, archives, including foreign ones, to activate the media and TV;
- the Ministry of foreign Affairs of the Republic of Uzbekistan should take into account the specialty of the appointed person and his ability to conduct research and analytical work in the host country when appointing an attaché for cultural Affairs;
- the Ministry of foreign Affairs, the Ministry of culture and other interested organizations and agencies (Uzarhiv, museums, etc.) of the Republic of Uzbekistan should more often conduct joint research work with colleagues from foreign countries, organize conferences and seminars where our specialists should be active organizers and participants, send specialists (experts, scientists) to conferences and seminars, visit exhibitions, involve in the preparation of contractual documents;
- the Ministry of culture of the Republic of Uzbekistan in the structure to create a control which on a constant basis would deal with the problems of monitoring and the return of cultural property;

- consideration of the issues of state succession in relation to the state archives, the former USSR requires hard work of a wide range of specialists, due to the specifics of the subject of these relations.

In order to solve the problems of succession in relation to the state archives of the former USSR, it is necessary that:

- state archives of a General nature could be kept on the basis of the principle "common heritage" in Russia as a predecessor state of the USSR;
- state archives, with the ratio for a particular state party of the CIS, has to be played or transmitted to the state successor;
- the return of a number of funds that were established in the territory of the successor state and, for various reasons and at different times, were outside it would also be in accordance with the provisions of the Agreement "On the return of cultural and historical values to the States of their origin" of 14 February 1992;
- the unification of national legislation in this area and the General training of archive personnel would be important;
- for long-term cooperation, it is also necessary to conclude a multilateral agreement on archival activities on the basis of international and national law;
- take control of the state private archives and other values of historical, cultural, scientific, social significance and are the common property of the state;
- consider the issue of publishing the journal "Archives»»;
- adopt the Law of the Republic of Uzbekistan "On restitution»»;
- become a full member (member) of the International Council on archives;
- on an ongoing basis to analyze the literature, international conventions and agreements adopted in the framework of the CIS, to conduct scientific, theoretical and research work;
- Uzbekistan and other countries of the region should take the initiative within the framework of the CIS and UNESCO on the return and preservation of cultural values to the peoples of Central Asia, and in this regard, promote the idea of

declaring a Decade for the return of cultural heritage to the peoples of Central Asia.

The objectives of the present and future generations of citizens of Uzbekistan and the countries of the region are: the preservation of old, good traditions, improving the competitiveness of intelligence at the international level, contributing to the reform and modernization of the country, the development of international relations on the basis of universally recognized norms of international law.