



Private Archive in Turkey: Recommendations in the Context of Private Archives Practices in Scotland

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ABSTRACT

Private archives, which are not produced by public sources, enlighten the public, and are the continuation and complement of public archives, have an important place in domestic and foreign archive literature. These archives are generally created by families, individuals, legal institutions and organizations by natural or unnatural ways. Therefore, they are seen as hobby products that have a special and personal quality and are not subject to legal regulations. However, private archives have a supporting role to public archives in illuminating the issues affecting the state and nation life, especially historical research. There are various legal regulations regarding private archives in Turkey. However, although these regulations are insufficient, active and effective steps are not taken at the point of implementation. In this study, the current legal regulations and issue concerning private archives will be examined and the National Archives of Scotland, which has important private archive applications, will be mentioned. Finally, some practice recommendations have been developed in order to make private archives more effective and functional in Turkey.

Keywords: Private Archive, Scotland Private Archive, Archive Legislation, Turkey

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I. Introduction

Archives continue their existence as institutions where records with archival value, which are important in the life of the state and nation from past to present, are kept together. Although it is divided into two distinct types as public and private archives, they are not considered independent of each other. The concept of private archive is defined in the Dictionary of Records Management and Archiving Terms (2009, p. 36) as "archives of non-official organizations, institutions, organizations, families and individuals". According to this definition, the fact that private archives are created by non-public institutions and communities does not prevent the establishment of a natural and unnatural relationship between both genres. Private archival records can be directly or indirectly related to public archives. As a matter of fact, characterizing private archives as complementary to public archives contributes to understanding the strong relationship

between the two genres. (Anameriç ve Rukancı, 2008, p.5). Private archives are generally perceived as unimportant due to their speciality and as hobby, which are far from personal and legal inspections due to their informal nature. However, it does not seem possible to ignore the archives that will contribute to the state and nation life of people, families or legal institutions that have been in contact with the public. The inadequacy of public archives on any subject that researchers are working on and the lack of relevant records reveal the importance and complementary effect of private archives at this point. In archive legislation and private archive literature, when defining the concept of private archive, it is generally expressed as all kinds of archives outside the public archives. (Devlet Arşiv Hizmetleri..., 1988; İcimsoy, 2007, p.49). However, this framework can reveal a broad meaning and lead to the characterization of any formation other than the public archive as a private archive. If the records that are stored or accumulated for any reason only concern their owners, do not inform the public, do not have an importance and

relationship to contribute to the public archives, or are materials that can be easily accessed from anywhere, they should be excluded from the scope of the private archive. (Rukancı, 2009, p. 55). Accordingly private archives can be defined as archives that are not produced by public sources, enlighten the public, and are the continuation and complement of public archives. Archives in the hands of banks, political parties, notaries, non-governmental organizations, families and individuals are among the most well-known examples of private archives.

In this study, the current legal regulations regarding private archives in our country are evaluated and examples of unique archival practice in Scotland are presented. At the end of the study, some recommendation regarding the development of private archives in Turkey are listed.

II. Private Archive Legislation in Turkey

Regarding private archives, there are eight (8) directly related articles in archive decrees and regulations in force in our country. Private archives are defined as "Archives of non-public institutions, organizations, families and real persons" in paragraph 4/1 of the Presidential Decree No. 11 (Devlet Arşivleri Başkanlığı..., 2018). The duties of the Presidency of State Archives (PSA) regarding private archives are as follows in paragraph 5/c of the above-mentioned decree, "To detect and register, certify, preservation, and, if necessary, purchase and bring to the State Archives the records concerning the state and national life in public, private and foreign archives. is expressed as "opening them to research by classifying them". The fact that records concerning state and national life are especially emphasized in this article clarifies the point of view towards private archives. It is the responsibility of PSA within the scope of the relevant legislation to identify, provide, preservation and arrange archives with this value. Under the roof of the Records Detection and Evaluation Department, these duties are gathered around the following three items.

Article 9/1.a: To identify, collect and preserve records in public, private and foreign archives concerning the life of the state and the nation, and to bring them to the archive by purchasing them when necessary.

Article-12/e: Providing records restoration services to private archives within the framework of the Presidency's possibilities.

Article-15/d: To identify and collect archive records held by various public institutions and organizations and private individuals, to purchase when necessary, to classify and translate and publish the ones deemed appropriate. (Devlet Arşivleri Başkanlığı... 2018).

Another definition in the archive legislation regarding private archives is included in the Regulation on State Archive Services. According to paragraph 4/p of the regulation, private archives are defined as "archives created by records held by real and legal persons. Again in

this regulation, there are regulatory articles regarding the purchase and export of private archives. Purchasing private archives is stated in paragraph 27/1 as "The Presidency may purchase archive records held by real and legal persons at a value to be determined when necessary". However, the Presidency does not have procedures and principles regarding the identification, collection, valuation, and in what cases (when necessary) purchasing process of private archival material. In the aforementioned regulation, the procedures for exporting private archives are as follows in paragraph 28/1: "Private archives or records in the form of archive records cannot be taken abroad without permission, in bulk or in separate parts, for any reason or reason. The necessary permission for exporting such archive records is given by the Presidency upon the request of real and legal persons. (Devlet Arşivleri Başkanlığı...2019).

In archive law, recording, preservation, arrangement and access issues related to private archives must be included. (Keskin, 2016, p. 92). When the archival legislation in force in Turkey is evaluated, it is striking that a general framework has been drawn up by the PSA regarding private archives, and that there are many issues that need to be explained by not including the basic elements. To summarize these points are as follows:

- *Detection, collection and evaluation of private archival material:* PSA does not have practice and inspection commissions for the identification of private archival material in the possession of individuals, legal entities, families and associations. According to which value criteria private archive records will be taken into account, to which institution/unit will the person or institutions having private archives apply to, will the accepted private archive be transferred to PSA, how the transfer process will be carried out, what level of restrictive procedures regarding the private archive will be, and how what the legal regulations (personal privacy, property right) will cover are important points that need to be answered.
- *Conservation and storage of private archival material:* There is no informative guidance on the preservation of private archives provided by PSA or in the possession of their owners, their restoration when necessary, the creation of suitable storage environments depending on the condition of the archive, and how this process will be carried out.
- *Arrangement of private archival material:* Private archives do not generally undergo arrangement due to their scattered nature or are kept in an order from the intellectual point of view of the owner. Explanatory information on how PSA will classify¹ the private archival material that it has purchased or donated, which organization methods it will use, how to classify the records, what information will be included in the records summaries, how to prepare

¹ The study titled "How Did Classify a Private Archive A Process Analysis with Methods and Terminology of Archival Science", which deals with the MHA private archive, is an example in this context.

the inventory lists, what components the coding will consist of, which materials will be used in the placement and storage of these materials. and there are no informative guides and signpost (Anamerić ve Rukanci, 2019, p. 1813-1814).

- *Making the private archival material accessible:* In terms of making the private archive available in line with the acquisition methods; Whether it will be physically transferred to PSA, whether only a digital copy will be given, how many years the access restrictions will be in place, privacy of private life, Right to Information Law, protection of public interests need to be clarified. (Rukanci, 2019, s. 505).
- *Confidentiality of Personal Data:* Private archives may have records containing data with the characteristics defined in paragraph 6/1 of the Law on the Protection of Personal Data (LPPD). It is forbidden to process data defined as sensitive personal data (defined in paragraph 6/1) as per paragraph 6/2 of the LPPD without the explicit consent of the person concerned (Personal Data..., 2016). However, there are issues regarding information security and personal data security in articles 4 and 6 of the Regulation on the Deletion, Destruction or Anonymization of Personal Data, and article 4 of the Electronic Notification Regulation (Personal Data..., 2017; Electronic Notification..., 2018). Private archives should implement practices that take into account the legal regulations regarding personal data. It is necessary to regulate the access of archive records containing personal data, how they will be located in the collection and the rights of the living heirs of the document owner on the document.

All the above mentioned items appear as an problem due to the lack of regulatory and informative documents such as guidance, contracts to be prepared based on archive legislation. Legislation arrangements related to private archives differ according to the social and political structure of the countries and the domestic legal system. (Rukanci, 2019, p. 504). Accordingly, regulations should be created as a result of country-specific evaluations based on good practice examples in foreign countries.

III. National Records of Scotland and Practices of Private Archives

The National Records of Scotland came to the fore nearly 400 years ago, when Scottish clergy in Edinburgh, Scotland, expressed the need to keep records of baptisms and marriages. Subsequently, at the recommendation of the Scottish Church, the Privy Council Act stipulated that every church official in Scotland must keep records of baptisms, funerals and marriages. Church officials, arguing for better record keeping, had a law passed by the Scottish Parliament in 1854. Thus, this responsibility was legally transferred from the church to the state control, and the foundations of the archive institution were laid. (Our

History, 2021).

The National Records of Scotland is an important archive among the British Isles with several archival collections. The sources of the history of Scotland as a separate kingdom are of major archival significance, forming links between many other countries. The archives of Scotland, whose origins date back to the 12th century, suffered losses as a result of the wars of independence in the 13th century and the removal of the archives from the country for various reasons in the 17th century. The oldest surviving Scottish public document is the Canterbury Lecture of 1189, the oldest private records is a charter of St Cuthbert's Church dated 1127 (Our History, 2021). Controlling private archives along with Scottish public records, identifying the oldest private archive documents reveals the importance given to archives, especially private archives, in Scotland.

The National Records of Scotland, maintains records created by the Scottish government as well as private records and documents created by business, real estate, family, court, church and other legal entities. The National Records of Scotland keeps archival records in eight categories. These categories are as follows:

1. *Government:* parliamentary and government documents prior to the 1707 Kingdom of Scotland; UK Government offices in Scotland after 1707; Scottish census and post-1855 population registration system; Scottish government offices and the Scottish Government after 1886.
2. *Legal registers:* Registers of deeds, sasines, wills and testaments;
 - a. service of heirs
3. *Courts of law:* Records of the Magistrates' Court, the Supreme Court, the Civil Courts of First Instance (including adoption records) and the commissioner's courts.
4. *Churches:* Church of Scotland, Free Church, presbyterian² parishes and synod records; records of the Scottish Episcopal Church; Old pastor records for the Church of Scotland (before 1855); records of Baptist, Methodist, and other protestant churches; Copies of baptismal, marriage and funeral certificates for previous Roman Catholics before 1855.
5. *Nationalised industries and transport:* Records of coal, gas, electricity, steel, shipbuilding industries., rail and channel systems.
6. *Local authorities:* valuation rolls for all Scottish counties and towns in 1855-1995; records of some towns, county councils, magistrates and other local authorities.
7. *Maps and plans:* Maps, plans, architectural and technical drawings from government offices, nationalized industries, transportation systems, courts, churches, private and corporate bodies.
8. *Private and corporate bodies:* Family, legal and real estate papers; records of business, associations and institutions (Research Guides, 2021).

²According to the TDK Online Dictionary (2021), a branch of the Protestant sect established according to democratic rules

It is possible that records owned by individuals, corporate bodies, families and associations/foundations can shed light on past events. The National Records of Scotland declares that owners or custodians of private archives must make themselves aware of and advise on the historical significance of the records they hold. In this context, the National Register of Archives for Scotland was established in 1946 to compile the record of private archival collections in Scotland, to encourage their maintenance and to make them available to others. A guide has been prepared by this institution on the preservation and management of records, including issues of deposit and access to private archives. (National Register of Archives for Scotland, 2021). This document titled "Archive Preservation Guidelines For Private Owners"; provisioning, security, storage, preservation, cataloging, records management and tax incentive etc. contains important topics. The phrase "The National Records of Scotland, Your Archive is Our Expertise" at the beginning of the guide indicates that the The National Records of Scotland guides the private archives' archives. (Archive Preservation Guidelines For Private Owners, 2019).

In the document titled Archive Preservation Guidelines For Private Owners published by The National Records of Scotland, it is stated that owners of private archives may defer payment of inheritance tax and capital gains taxes if the archive continues public access. If the owner of the private archive does not retain the archive or sells it, he is liable to pay taxes. As long as these conditions are maintained, the exemption status continues depending on its application by the next generations. The private archive may be allowed to remain with the owner. The Scottish Finance Act, which was updated in 1998, put forward a number of criteria for this situation. The archive collection according to these items that stand out as the Waverley criteria:

- Prominent importance records in national life and history
- Prominent importance records a particular branch of learning, or
- Prominent importance in a particular region in the country (Archive Preservation Guidelines For Private Owners, 2019).

IV. Selection, Scope, Acceptance Conditions and Transfer of Private Records/Archives

The National Records of Scotland, provides explanatory information on the selection of special records/archives and the acquisition of these archives in the future in the document it has published under the title Collection Development Policies. Information on the selection of special records/archives is as follows:

- Historical records of private individuals, families, cultural organizations and businesses form an important part of the records kept by the The National Records of Scotland. While these records are not publicly available, they contain important evidence for understanding the history of the Scottish nation and must be preserved.

- Private records are accepted and transferred in accordance with the provisions of the Public Records (Scotland) Act according to clause s/11.a of the National Heritage (Scotland) Act 1985.
- Some private records are considered gifts to the nation in exchange for inheritance tax, some are gifts from generous donors, and some are purchased. However, most private archives are managed and held as custodians (borrowers) by their owners or creators. Thereby, it continues to be kept under the supervision of the keeper of private property.
- National Records of Scotland has a small annual budget for the purchase of private records and the use of this fund may include ex-gratia payments for the improvement of public records held under special custody.
- The National Records of Scotland is the recognized national repository for records of the Church of Scotland and its predecessors. • The National Records of Scotland have an agreement with the Church of Scotland for the retention of non-current records. It also holds the records of other Protestant denominations (denominations), including the Methodists and Friends (Quakers), as deposit. (Records of the Roman Catholic Church in Scotland are held by the Scottish Catholic Archive and the Roman Catholic Archdiocese of Glasgow Archives. The Scottish Jewish Archives is the repository for records of the Jewish community in Scotland.) As Scottish society evolves as it changes, The National Records of Scotland continues to hold religious records of national importance from any denomination (Collection Development Policy, 2021).

These articles explain The National Records of Scotland's selection policy for private records. Apart from this, some criteria have been determined for the acquisition of these archives in the future. Records and manuscripts held by private and corporate bodies according to these criteria; may be acquired by The National Records of Scotland by legal right, will, purchase, donation, tax return, or indefinite loan. In this context, the persons, families, institutions or entities that hold various special archive records are as follows in Scotland:

- Public records in private hands defined as extra commercium
- Records of national (Scottish or UK) or international significance, especially supplementing public records. These records include records of families and family members who have held important political, administrative or judicial positions. Consequently, it can be seen as a complement to public records. The acquisition of records is particularly important where the public records available in The National Records of Scotland is insufficient.
- Records of landowners (especially before 1914), commercial, technical or industrial business of national or regional historical significance. These records include registers of private companies (railway, coal, steel, electricity and shipbuilding) that succeeded in nationalisation.

- Records of private organizations of national status (for example charitable, charitable and advocacy organisations) aimed at the social and economic well-being of one or all of the communities that constituting the Scottish people.
- Records judged to contribute significantly to the family history services offered by The National Records of Scotland (e.g. artificial compilation of names of public officials or employees of particular organisations; indexes created specifically for records series)
- Records that can be added to existing collections in The National Records of Scotland.
- Records judged to be of historical importance for which there is no suitable local archive, predominantly involving local or regional issues. In case of establishing an archive of these records, the right to be transferred to a local repository will be reserved.

There are other records that are not included in one of the specified categories, but that The National Records of Scotland considers to contribute to the national interest and cannot be provided by any other institution. The importance of the private and corporate bodies in these records will be measured by the importance of the event and activity to which they relate (Collection Development Policy, 2021).

The National Records of Scotland puts forward certain conditions of acceptance of the acceptance of private records. These conditions are as follows:

- Any gift should, if possible, provide both the copyright and property rights of the donor. And, other copyright holders should be identified for materials in collections, if known.
- The deposited (borrowed) material must meet the selection criteria and will have bespoke contractual obligations before being deposited. In particular, the obligations will include notice periods for the withdrawal of the collection and compensation for the conservation work to be carried out. In order to create images of records deposited for the purpose of access, security and preservation, a general permission will be obtained on these images. In the case of an archive owner who subsequently decides to sell their records, an initial refusal is expected to be offered, and also some reductions in price for storage, cataloging and preservation costs are expected.
- In some cases, archive owners are asked to make an additional commitment before donation. The right to expect charges for any cataloging work is reserved, in particular if the records are withdrawn before the agreed period. Also, in some cases, a certain percentage of the price of any records that is sold, listed and issued to The National Records of Scotland and subsequently to a third party is expected to be paid. The general purpose of making these contracts is to request withdrawal of records before the secured dates, to refund the expenses incurred for the records, to

get a share at the agreed rate in case the private records are sold by The National Records of Scotland to other persons or organisations. covers topics. It is expected that at least some of the public money spent on cataloging, storage and conservation will be covered.

- Some or all of these matters will be specified separately in specific contracts agreed with each depositor, as appropriate.
- The National Records of Scotland may receive copies of original records meeting the selection criteria in a variety of medium. It is necessary to be satisfied that the originals of the records have not been lost, destroyed or made accessible to everyone. In this way, having copies of records is seen as preservation important information for future generations or providing a more convenient form of access.
- The National Records of Scotland may purchase private records when appropriate or where funding is available.
- In general, The National Records of Scotland may receive advice from third parties (e.g. academics, experienced researchers) on the importance of particular collections if a large collection of substantial physical records is submitted, or where there is controversy over their historical significance. (Collection Development Policy, 2021).

Most of the private collections in The National Records of Scotland deal with various geographical or administrative areas. Good archiving practices for these collections require them to be kept as a whole. In this context, the transfer or other partitioning of any part of a private collection is not considered. In addition, when transferring private collections acquired as donations, the wishes of the donors or the commitments made by The National Records of Scotland should be taken into account. If a special collection is proposed to be transferred to the National Archives of Scotland today, eligibility for such transfer will not be considered under the "Collection Development Policy" or will be accepted pursuant to clause 7 of the selection of special registration criteria (Policy on the Transfer...2021).

The National Records of Scotland takes care to keep confusion to a minimum by putting forward a broad framework for private archives. The correct understanding of private archives by the public reveals the need for various guides and guides, especially the legislative arrangements put forward by the national archives in this area. Accordingly, the preparation of the relevant documentation by explaining the selection criteria, scope information, acceptance conditions and transfer processes for private archives will contribute to the correct execution of this process.

V. Conclusion and Evaluation

The National Records of Scotland is an exemplary institution in terms of private archival practices, incorporating encouraging practices in preserving the

oldest private archival records, publishing special guides to archive owners, providing expert assistance and transferring private archives. In Turkey private archives contain general statements based on legislation, as well as policy and legal regulation deficiencies regarding the implementation process. In this context, the regulation of protectionist approaches to private archives is a necessity. Private archives and their contents should be recorded by identifying the owners of private archives and encouraging them to apply to the PSA. In this context, some applications should be developed so that private archives can be more effective and functional. These application recommendations are as follows:

- First of all, the current archive legislation in force in Turkey, private archives; detection, regulation, preservation, confidentiality, control and legal status should be revised again. In this context, the enactment of the archive law, which has been constantly emphasized from the past to the present, will strengthen the legal infrastructure regarding private archives.
- Private archives; Due to their commitment to individuals, institutions and communities, procurement procedures reveal the need for some legal regulations. The preparation of a comprehensive private archive protocol as a result of the cooperation of lawyers and archivists will contribute to the regular, legal and regular presentation of private archives (Rukancı, Anameriç and Başar, 2021, p.27). In this context, it is necessary to establish a "private archive acquisition" policy in order to reveal the scope and limitations of the acquisition process.
- PSA should establish "Special Archive Detection and Collection" commissions on a regional or, if necessary, provincial basis to identify private archives. The main duties of these commissions are; to identify the owners of private archives of the region/province they are located, to organize informative trainings for the owners of private archives, to provide preservation and classification services on the part of the PSA in line with the request of the private archive owners, to transfer the private archive to PSA, both physically and digitally, in line with the approval of the archive owners. should be determined.
- Announcements, activity, documents and public advertisements should be prepared to share the archives of institutions or individuals with private archives.
- Some arrangements should be made to encourage institutions or individuals with Private Archives to share their archives. Practices that will create a sense of material or moral satisfaction, such as tax reductions, should be evaluated within this scope.
- Publications describing the archives of individuals, families or institutions that have regional or local private archives should be prepared by the PSA. These publications should be promoted and kept in the library of the region/province where they are

located. The purpose of broadcasting activities is to create a stimulating effect.

- PSA should add the "Special Archives" option in addition to the Ottoman, Republic and Ministry of Foreign Affairs archives that are separated differently in the Records Searching System. Private archives should be structured as records belonging to prominent people, family records, community records, city archives, municipalities, universities, business records, sports, theatre, cinema, craft and trade organizations.

While sensitivity and practices regarding the preservation of public archive records, prevention of their destruction and deliberate destruction are more valid due to their official structure, they cause private archives to be perceived as insignificant due to their dispersed structure and the fact that they are produced without public ownership. Therefore, it is a national responsibility to reconsider this type of archive, which will have an impact on the life of the state and nation, and to create new regulations in the pursuit of good practice examples.

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