

July18 is World Population Day and July 19 is Nelson Mandela International Day

News from the ICA Human Rights Working Group

June 2011

Trudy Huskamp Peterson, Chair

The following is number nineteen in a series of brief discussions of the Articles of the Universal Declaration of Human Rights (UDHR) and the archival holdings that relate to them.

<u>Universal Declaration of Human Rights, Article 18.</u> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 2 of the Universal Declaration of Human Rights proclaims, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind" including any distinction by religion. Article 18 amplifies the right to religious freedom, stating that all persons have a right to freedom of thought, conscience and religion, including the right to gather for religious purposes and to teach about beliefs. Originally the draft of what is now Article 18 said simply, "There shall be freedom of conscience and belief and of private and public worship." However, during the drafting process the delegates encountered many questions: Do people have a right not to believe in anything? Is there a right not to be compelled to take part in a religious act or to declare religious views? And what about proselytizing? The delegate from the USSR argued that not only should people have the right not to believe, but this "article should grant freedom of conscience not only for the practice of religion, but also for anti-religious propaganda." The delegation from Saudi Arabia objected strenuously to the inclusion of a right to change religious affiliation, and this Article, along with Article 16 which includes a person's right to marry anyone of any religion, led the Saudi delegation to abstain when the Declaration was put to the final vote. (Six Communist nations also abstained, but their objections were principally on the grounds of the role of the State in ensuring human rights.) (Morsink, The Universal Declaration of Human Rights: Origins, *Drafting and Intent*, pp. 21-28, 258-263).

Given the sensitivity of the subject of religious practice, it is no surprise that international bodies have returned to the topic again and again in the decades since the UDHR was adopted. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966, include statements on the freedom of religion. Then, in its most comprehensive statement on religious freedom, the UN General Assembly in 1981 adopted the UN Declaration on the

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. That Declaration says boldly in its Article 3:

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

One of this Declaration's main contributions was its Article 5, which outlines the rights of parents and children with respect to religious practice.

In 1993 the UN Human Rights Committee, the treaty body that oversees the Covenants, clarified the still ambiguous language on nonbelievers by stating that the Covenant protects, "theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief." The Committee further commented that if there is a state religion or official ideology that encompasses a set of beliefs, it "shall not result in any impairment" or discrimination against the "adherent to other religions or non-believers." Further, the right to conscientious objection and the right to refuse to perform military service because of religious beliefs is a right that "can be derived from Article 18," the Committee declared (Human Rights Committee General Comment No. 22).

The United Nations also considered the relationship between religious practices and minority populations. The 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities underscored the right of minorities "to profess and practice their own religion" (Article 2) and declared "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" (Article 1). This was followed in 2007 by the UN Declaration on the Rights of Indigenous Peoples, which has repeated references to religious freedom, most importantly in Article 12: "Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains."

The rights of women in religious practices also have been a recurring issue. In 2000 the Human Rights Committee issued General Comment 28 on the equality of rights between men and women, which said, "State parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all ICCPR rights." (Texts of all these items are found in the United Nations treaties database http://www.unhchr.ch/tbs/doc.nsf/)

The universal nature of religious practice means that an enormous variety of records relate to the rights embodied in Article 18. The records of faith-based institutions of all kinds are fundamental, including records of religious courts. In addition, the records of legislatures (for example, the French debates over wearing headscarves), courts, police, civil registries and notaries, non-governmental organizations that defend human rights, women's and indigenous people's organizations and media corporations all have records on the exercise or prohibition of religious freedom. And, as always, the personal papers of individuals involved in the issue contain information that is unique. Archivists can assume that the archives they manage will have some materials that relate to the principles of Article 18.

International news.

Al-Qaida/United States. Intelligence analysts examining the material found on the computers, CDs and USB drives seized during the raid on Osama bin Laden's compound report that al-Qaida and bin Laden kept "meticulous records," according to U.S. National Public Radio. Included among the documents are al-Qaida's founding bylaws, personnel records, receipts for expenditures, and detailed human resources policies. Lt. Col. Reid Sawyer, head of the U.S. Military Academy (West Point) Combating Terrorism Center, said that "when you have a distributed movement . . you have to gain efficiencies in various means. And one way to do that is to keep very good records and to understand the disparate parts of your enterprise." http://www.npr.org/2011/05/31/136721965/al-qaidas-paper-trail-a-treasure-trove-for-u-s

Brazil/World Council of Churches. In 1978, during the dictatorship in Brazil, Brazilian lawyer Eny Moreira persuaded the World Council of Churches in Geneva, Switzerland, to hold a clandestine collection of copies of court records to protect them from destruction. The Council has now given a copy of its copies to the attorney general of Brazil. Included among the files are records "which include evidence that had gone missing from files held by the Supreme Military Court of Brazil," according to the Council's press release. Thanks to Perrine Canavaggio for calling this transfer to our attention. http://www.oikoumene.org/en/news/news-management/eng/a/article/1634/healing-memories-atrocit.html

Canada/Lithuania. At the request of the Government of Lithuania, Library and Archives Canada (LAC) transferred to the Lithuanian State Archives 1400 original consular files, dating between 1924 and 1960, on Lithuanian Canadians. The files were created by the Honorary Consuls General in Canada, who represented the Lithuanian government and the "government which acted in immigration since Lithuania's occupation and incorporation" into the USSR. In 1982 the then Honorary Consul General donated the records to the Archives of Canada for preservation. LAC retains a digital copy of the files. Thank you to Normand Laplante of LAC for providing background information on the transfer. http://www.sys-con.com/node/1855648

El Salvador/Spain. A Spanish judge issued arrest warrants for four former top military leaders of El Salvador, charging them with the killing of six Jesuit priests and their housekeeper and her daughter in 1989. Documents from the U.S. government, obtained by the National Security Archive (an NGO), were provided to the court during its two-year review of the case. Many news media covered the indictment; links to the ruling are included in http://latimesblogs.latimes.com/laplaza/2011/05/spanish-judge-indicts-20-salvadorans-in-1989-killings-of-jesuits.html

<u>European Union.</u> The European Union's data protection supervisor issued an opinion that the EU's Data Retention Directive is contrary to "the fundamental right to privacy." The Directive requires all Internet service providers to store traffic and location data. http://www.computing.co.uk/ctg/news/2076080/eu-retention-directive-contravenes-privacy <u>Finland/Lebanon</u>. In a generous act of international archival solidarity, the National Archives of Finland is providing preservation storage for digital copies of significant original material concerning the civil war in Lebanon that is held by the UMAM Documentation and Research Centre in Beirut, Lebanon. The documents include information relating to persons killed or missing during the civil war in Lebanon (1975-1990), material about the Sabra and Shatila refugee camp massacres in 1982, and unique photographs.

 $\underline{http://www.arkisto.fi/en/news/609/61/Backups-of-Lebanon-civil-war-material-stored-in-Finland/}$

<u>France/South Korea.</u> In 1866 French troops seized 297 volumes of Koreas royal archives from a royal library on Ganghwa Island west of Seoul. Following lengthy negotiations, the volumes were returned to Korea on the basis of a "renewable lease." http://www.koreatimes.co.kr/www/news/nation/2011/06/117 88731.html

International Tracing Service. Established at the end of World War II to help war-torn families reunite, the International Tracing Service (ITS), located in Arolsen, Germany, is managed and governed by the International Committee of the Red Cross (ICRC). The ICRC announced it will withdraw from the administration of the Tracing Service as of December 2012. At the annual meeting of the international commission that supervises the work of the Service, the commissioners discussed a draft agreement that would make the Federal Archives of Germany the future institutional partner for management of the ITS when the Red Cross departs. See the press release after the annual meeting at http://www.its-arolsen.org/en/press/press_releases/index.html?expand=5179&cHash=428d621c62

<u>Japan/Korea.</u> Japan annexed and ruled the Korean peninsula from 1910 to 1945. During that time 1205 volumes of documents, including the royal records of Korea's Joseon Dynasty, were taken to Japan. An agreement to return these archives to South Korea has now been concluded, and the records are to be transferred within six months. Japan will keep digital copies. http://mdn.mainichi.jp/mdnnews/news/20110611p2g00m0dm002000c.html

Northern Ireland/United Kingdom/United States. Boston College (BC), which holds audiotapes and other materials from oral history interviews with former members of the Provisional Irish Republican Army, filed a motion in U.S. District Court to quash subpoenas issued for the materials from interviews with one IRA member (see HRWG News of May 2011 for background information). The College argued the release of the material could jeopardize not only the safety of those interviewed, but also the two former paramilitary members who conducted the interviews and other BC staffers. The College also stated in an affidavit that the British and Irish governments recently donated to BC sensitive papers about the decommissioning of paramilitary weapons.

 $\underline{\text{http://www.boston.com/news/local/massachusetts/articles/2011/06/09/bc_asks_for_ira_projec}\\t_secrecy/$

National news.

<u>Canada.</u> The Federal privacy watchdog audited used data storage devices (including computers, laptops, USB drives and memory cards) that were prepared by Staples Business Depot stores for resale. Of the 149 items tested, over one-third (54 devices) still contained customer data, such as passport numbers and tax records.

 $\underline{http://ottawa.ctv.ca/servlet/an/local/CTVNews/20110621/privacy-watchdog-chastises-staples-for-reselling-hard-drives-with-personal-info-110621/20110621/?hub=OttawaHome$

A three-judge panel of the Federal Court of Appeals ruled that the government failed "to exercise the discretion" required when redacting records requested under the Access to Information Act. The case involves documents that had been redacted to eliminate references to torture, extrajudicial killing and mistreatment of detainees in Afghan hands, even though *The Globe and Mail* had published the "blacked out" portions of the documents. http://www.theglobeandmail.com/news/politics/censors-must-not-arbitrarily-black-out-public-documents-panel-rules/article2045552/

<u>Colombia.</u> Colombia enacted a law to provide financial compensation to victims of the current armed conflict and to return land to displaced persons. On June 15 the minister of agriculture and rural development announced that 88 families had received property titles. Recording and preserving the titles will be a key element of the program, as will assembling the documentation to identify the persons to be compensated. http://www.bbc.co.uk/news/world-latin-america-13542244, http://www.incoder.gov.co/file/Boletines%20II/boletin46_15_06_11.pdf

<u>Dominican Republic.</u> The Museo Memorial de la Resistencia Dominicana, "designed to honor the memory of the resistance movement," opened on the eve of the 50th anniversary of the overthrow of the Trujillo regime. In 2009 the "Documentary Heritage on the Resistance and Struggle for Human Rights in the Dominican Republic, 1930-1961," was inscribed on the UNESCO Memory of the World Register. Some or all of these materials may be housed in the museum. http://portal.unesco.org/ci/en/ev.php-urll_lip=31420&URL_DO=DO_PRINTPAGE&URL_SECTION=201.html

Egypt. The Committee to Document the 25th of January Revolution (a group of historians, university professors and activists) are collaborating with the National Library and Archives of Egypt to collect oral histories, testimonies, newspapers, reports from human rights and religious groups, and photographs, jokes, slogans, and songs from the protests. The interim government has said that the records of the State Security service dating as far back as 1910 "could be made available," according to an article in the *Chronicle of Higher Education*. http://ehronicle.com/article/In-Egypt-an-Open-Archive/127884/

Guatemala. In early June, Guatemala arrested a former national police chief wanted in the disappearance of a student union leader in 1984 during the civil war. Two former policemen were convicted last autumn for the disappearance of the labor leader; the overwhelming number of documents used in the case against the two officers were from the Guatemala police archives, and the archives will play a role in this case as well.

http://www.reuters.com/article/2011/06/09/us-guatemala-arrest-idUSTRE7585XF20110609

Less than two weeks later, the chief of staff of the armed forces between March 1982 and October 1983 was arrested and charged with genocide, war crimes and crimes against humanity. This is the first arrest on genocide charges in Guatemala.

http://www.elperiodico.com.gt/es/20110621/pais/197112

Also in Guatemala, the project to declassify military archives from the period of armed conflict, announced by President Alvaro Colom in 2008, has now released 12,287 items,

which the military claims is all its records from the period except 55 documents it withheld. This figure is in stark contrast with the estimated 80,000,000 items in the police archives, many of which are from the same period.

http://www.elperiodico.com.gt/es/20110621/pais/197111/ The police archives launched its website on June 7, http://www.archivohistoricopn.org/, when it released a major report on the work in the police archives.

http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB347/index2.htm

Hungary. Concerns over the plan to enact a new law that would lead to the dispersal of the archives of the communist-era secret police led the Secretary General of the International Council on Archives to contact the Association of Hungarian Archivists for its views. The Association's response is annexed to this Newsletter with the permission of the Association and the Secretary General. In giving permission, the Association president said in a late June email: "The most definitive recent development was that a responsible official of the Ministry of Public Administration and Justice confirmed me just a few days ago, that the representatives of archival profession would be involved in the preparation of the law. He also requested us to formulate our proposals regarding the content and wording of the new law and send the draft proposal to him."

Indonesia. The *Jakarta Post* published an article on June 20 headlined "City archives in a state of neglect." The *Post* noted that the archives will move to a new building sometime this year, but at present the archives is "rarely visited" although it holds, among other things, the important building permits for Jakarta, a city undergoing "rapid development." The director of the archives told the newspaper that "there are no bylaws or gubernatorial decrees on the city's archives," but he emphasized that finding much needed documents in an emergency is important "as in past experience careless document keeping resulted in Indonesia ceding two islands—Sipadan and Ligitan—to Malaysia."

http://www.thejakartapost.com/news/2011/06/20/city-archives-a-state-neglect.html

<u>Nigeria.</u> Nigeria passed its Freedom of Information Act, which has been under consideration for at least five years. According to the *Daily Independent*, "Many Nigerians have for long believed that FOI would help in remedying the issue of corruption in Nigeria." http://www.independentngonline.com/DailyIndependent/Article.aspx?id=35032

<u>Pakistan.</u> The "general record room" of the Abbottabad District and its contents were entirely destroyed by fire. The records included the litigation records of civil and criminal cases dating from 1872 and the house and general census records from the days of British rule. The building was built in 1940; authorities believe the fire was caused by a short circuit. http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=51948&Cat=7&dt=6/11/2011 For a picture http://tribune.com.pk/story/186400/total-loss-fire-guts-centuries-old-historic-records/

<u>Sri Lanka.</u> British television Channel 4 produced a documentary, "Sri Lanka's Killing Fields," containing video footage said to have been taken by soldiers with their mobile phones that appears to show prisoner executions by Sri Lankan military forces. Sri Lankan authorities argue that the footage is fake, but according to *Radio Netherlands Worldwide* two UN investigators have determined that the video is authentic. This is reminiscent of the video taken by members of the Serbian Scorpions unit while killing prisoners during the Balkan wars of the 1990s. http://www.rnw.nl/international-justice/article/victor-koppe-channel-4-documentary-sri-lankas-killing-fields

<u>Tunisia.</u> Tunisian refugees in Paris "took up camp in an abandoned building that had been officially known as the Tunisian Cultural Centre" and discovered that it had been used by deposed president Ben Ali's political party, the Rally for Constitutional Democracy. In two rooms they found, *Al Jazeera* reports, "photos, correspondence, financial records, lists of RCD members in France, information on Tunisian dissidents along with files on French political figures and journalists." A French-Tunisian activist says a committee has been created to decide what should be done with the documents. http://english.aljazeera.net/indepth/features/2011/06/2011627145241593702.html

<u>United Kingdom.</u> The British intelligence agency MI-5's records on British volunteers during the Spanish civil war have been released by the National Archives. According to the Archives, "The documents are scanned images of pages copied from records kept by the Security Service. They include a complete list of names and dates of British International Brigade volunteers arranged alphabetically as well as selected copies of index cards on individuals deemed to be of interest. These list names, dates and places of birth, addresses, occupations and dates of departure and arrival in Spain, as well as some information about their post-war activities." According to *The Guardian*, the records show "what a close eye British intelligence kept on the potential volunteers at the ports, and how unwilling they were to prevent their departure." http://www.nationalarchives.gov.uk/documentsonline/spanish-civil-war.asp#intro, http://www.guardian.co.uk/commentisfree/2011/jun/28/mi5-spanish-civil-war-britain

<u>United States.</u> The University of California, Berkeley, launched the <u>California Language</u> <u>Archive</u> (CLA) website, which provides access to the largest collection of indigenous language materials at a U.S. university. The site's downloadable digital content includes rare audio recordings and written documentation, including 51 hours of Wintu songs and conversations, the hummingbird fire story recited in the nearly extinct language of Nisenan, and handwritten notes on Chochenyo that are based on work with the language's last good speaker. While the focus of the materials is California, there are items on languages "all the way from Alaska to South America and from the Pacific Ocean to the Atlantic," according to the university's press release. http://newscenter.berkeley.edu/2011/06/20/california-language-archive/

The Federal Department of Health and Human Services has a website that lists nearly 300 hospitals, doctors and insurance companies that have reported significant breaches (defined as those affecting more than 500 individuals) of medical privacy between September 2009 and the present. According to an analysis by *The New York Times*, the personal medical records of "at least 7.8 million people have been improperly exposed." http://www.nytimes.com/2011/05/31/business/31privacy.html?_r=1

Polio survivors are now seeking records of their treatment in the 1950s in the hope that the records will provide clues to their current medical problems that may be linked to the original disease. In an article focusing on the search for medical records of polio patients in Michigan, the *Detroit Free Press* reported that because Michigan state law "allows for medical records to be destroyed after seven years" and because of the "many mergers and closings of hospitals over the years" these searches are difficult. For example, said the newspaper, some records of the Sister Kenny Hospital were transferred to the Bentley Historical Society at the University of Michigan, but the patient records were not.

 $\frac{http://www.freep.com/article/C4/20110612/NEWS06/106120474/What-polio-took-away-Survivors-seek-records-may-fill-gaps-childhood?odyssey=nav|head|$

A "self-described anarchist and veteran organizer of anticorporate demonstrations" obtained a copy of his file from the Federal Bureau of Investigation. Running to 440 "heavily redacted pages" and dating through the year 2008, it shows the "F.B.I.'s increased counterterrorism operations since the attacks of September 22, 2001," according to the *New York Times*. http://www.nytimes.com/2011/05/29/us/29surveillance.html?r=1

Maryland. An investigation by the state Inspector General found that the supervisors of the state's health lab knowingly and wrongly destroyed blood test records for lead-poisoned children, even though they knew the records were actively sought by the children's attorneys, reported the *Baltimore Sun*. See HRWG News of March 2011 for background information. http://www.baltimoresun.com/health/bs-md-health-department-lab-report-20110603,0,4530138.story

North Carolina. A man renting a house was cleaning out the basement and found boxes of medical records from the Wake Forest Baptist Medical Center. The owner of the house, who worked at the Center, is charged with stealing "thousands of documents" that included names, phone numbers and Social Security numbers, medical histories, diagnoses and medications, the Winston-Salem Journal reported. http://www.news-record.com/content/2011/06/03/article/baptist recovers more medical records from properties_of_former_employee

Oregon. Oregon Public Broadcasting reported that a union of farm workers and tree planters, Pineros y Campesinos Unidos del Noroeste, donated its records to the University of Oregon. The materials include papers, pictures, and tape recordings of its work. The secretary-treasurer of the union said, "The idea here, as our late co-founder Cipriano Ferrel used to tell us, way back in the day, that many of us didn't fully believe, is we are making history, and we need to act like we're making history, and part of that is to document what we're doing." http://news.opb.org/article/farmworker-union-donating-historical-records-university/

Texas. In yet another case of important documents in public trash, the El Paso, Texas, television station KTSM News Channel 9 got a tip that confidential documents, including tax returns and social security cards, were in an open dumpster. The station investigated and called an office whose documents were in the trash. A man from that office found not only business materials but also "pretty much all myself and family's personal information." Tax Masters, the company that tossed out the documents, said that a new employee misunderstood instructions and put the documents in the trash instead of holding them for pick up by a shredding service. http://www.ktsm.com/news/update-important-documents-left-in-dumpster

Publications

The *Annual Report 2011* of the Network of Concerned Historians is now available in a print-friendly version (pdf) at http://www.concernedhistorians.org/content/ar.html.

The University of Pennsylvania Press is publishing a new journal, *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, edited by Samuel Moyn. http://humanityjournal.org

Calls for papers, conferences, courses.

The journal *Histoire & Mesure* is planning a study day and a special issue on the topic of reparations and compensations. The journal is calling for papers about reparations and the methods of compensation after the destruction or destitution of private or collective property (monuments, buildings, regions). Papers should consider the role and action of public authorities (political, military, or any other collective organisation) involved in the process of assessing and compensating, partially or fully, claims for compensation. Proposals must be sent by September 15, 2011, to Morgane Labbé morgane.labbe@ehess.fr, Alessandro Stanziani alessandro.stanziani@ehess.fr, Anne-Sophie Bruno annesophie.bruno@gmail.com and Anne Varet-Vitu anne.vitu@ehess.fr.

Please share news with us! trudy@trudypeterson.com or J.Boel@UNESCO.org

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ANNEX

15 April, 2011 18-3/2011.MLE

Mr. David A. Leitch ICA Secretary General

Dear Mr. Leitch,

My colleague, Andras Sipos forwarded to me your e-mail sent on 04 March 2011 inquiring about the expected content of the law regulating the management of the files of the former communist secret services in Hungary. You had expressed your concern regarding the law and I have promised to give you a thorough answer after I met the preparators of the legislation. Thus let me report on the following.

On my request Dr. Bence Retvari, State Secretary of the Ministry of Public Administration and Justice, who is responsible for the preparatory process of legislation, summoned a meeting on March 31, 2011. Invited were the representatives of the Association of Hungarian Archivists, the Historical Archives of the Hungarian State Security and the representatives of the Ministry of Interior and the national security services.

At the meeting Mr. Retvari argued that the aim of the legislation would be to enhance the "intellectual restitution" for the victims of the communist dictatorship and to ensure their right of disposition over the informations relating to them. The State Secretary expressed willingness to discuss the draft of the text of the law with the participants of the meeting in future as well. I find this gesture very important and encouraging.

Let me inform you about the topics you have mentioned in your letter which were dealt with at the meeting:

- All the invited participants unanimously (including the representatives of the Ministry of Interior and the national security services) expressed their view that files created in the course of the activity of the security services should not be delivered to the watched persons as their own property. The files should remain property of the State. However, the participants supported the intent to give back those documents to the victims, which had been their properties but confiscated by the security services (photos, letters seized in the course of raids and at post offices).
- The participants raised objections to the fact that the decision of the government on the preparation of the new law does not mention the respect of the right to freedom of scientific research as one of the principles of the drafted law.

In my view there is a good chance that the preparators of the legislation will take intro consideration both comments in the process of law drafting.

The invited archivists supported their opinion by a set of professional arguments. I personally expressed my opinion that the declassification and selection of the files still kept by the

national security services should be carried out under civilian control, which could be performed either by civic or by state organization.

As I have mentioned we concluded our meeting by stating that the negotiations should continue. That is why I do not see any reason for a statement to be published by ICA.

Let me thank you once again for your circumspect attitude.

Sincerely Yours,

Arpad Tyekvicska President Association of Hungarian Archivists