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## Creative Persons and Artistic Associations Act

Passed on 18 November 2004

(RT<sup>1</sup> I 2004, 84, 568),

entered into force 1 January 2005.

### § 1. Purpose of Act

(1) The purpose of this Act is to support cultural creativity and the preservation and development of fine arts at professional level and to improve conditions necessary for the creative activity of creative persons through artistic associations and to create guarantees therefor.

(2) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375; 2003, 20, 117; 78, 527) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

### § 2. Creative person

(1) For the purposes of this Act, a creative person is an author or a performer within the meaning of the Copyright Act (RT 1992, 49, 615; RT I 2004, 77, 527) who acts in the field of graphic art or plastic art, painting or applied art, set design, audiovisual art, stage art, literature, music or architecture.

(2) A creative person may be a member of several artistic associations at the same time.

### § 3. Creative person engaged in liberal profession

(1) A creative person engaged in a liberal profession is an author or a performer acting in an artistic field set out in subsection 2 (1) of this Act, who is not in public service, is not employed under a contract of employment or other similar contract under the law of obligations which is of permanent nature, does not derive business income or income from other professional activity.

(2) A creative person engaged in a liberal profession is not a sole proprietor. The provisions of tax legislation concerning sole proprietors entered in the commercial register or registered with a local Tax and Customs Board office of their place of residence or place of business also apply to the taxation of income derived from creative activities by creative persons engaged in a liberal profession.

### § 4. Artistic association

An artistic association is a non-profit association recognised pursuant to the procedure provided for in this Act, the purpose of which is to promote the corresponding artistic field and support the creative activities of creative persons who are members of the artistic association.

### § 5. Requirements for artistic associations

(1) An artistic association shall comprise at least 50 natural persons with active legal capacity who have been engaged in creative activities in the corresponding artistic field at least for the last three years and whose works or performances have been published during the period within the meaning of §§ 9 and 10 of the Copyright Act.

(2) One artistic association may cover only one artistic field set out in subsection 2 (1) of this Act.

## § 6. Statutes of artistic association

In addition to that provided for in the Non-profit Associations Act (RT I 1996, 42, 811; 1998, 96, 1515; 1999, 10, 155; 23, 355; 67, 658; 2000, 55, 365; 88, 576; 2001, 56, 336; 93, 565; 2002, 53, 336; 2003, 88, 591), the statutes of an artistic association shall set out the following:

- 1) the date of foundation of the artistic association;
- 2) the artistic field of the artistic association;
- 3) the procedure for the management of the artistic association;
- 4) the procedure according to which there is an obligation to give notification of works which a member of the artistic association has created or performed in the artistic field of the artistic association and to register the works;
- 5) the procedure for the election of members of the committee for the grant of support for creative activity and the rules of procedure of the committee;
- 6) the procedure for the maintenance of records on persons who receive support for creative activity and on support for creative activity;
- 7) the bases of and procedure for the payment of grants for creative persons and other allowances.

## § 7. Recognition of artistic associations

- (1) Recognition of an artistic association means a procedure in the course of which the compliance of the artistic association with the requirements of this Act is assessed.

(2) The Minister of Culture shall decide to recognise or refuse to recognise an artistic association.

#### § 8. Application for recognition

(1) For an artistic association to be recognised, the artistic association shall submit a written application to the Ministry of Culture.

(2) The application shall contain the following information:

- 1) the name and registry code of the applicant;
- 2) the seat, address and telecommunications numbers of the applicant;
- 3) the artistic field;
- 4) the date of foundation;
- 5) the number of members of the artistic association;
- 6) the list of creative persons who belong to the artistic association;
- 7) the name and signature of the person authorised to represent the applicant.

(3) The statutes of the non-profit association shall be appended to the application.

(4) The Ministry of Culture has the right to demand additional information on the works and performances created by its members.

#### § 9. Recognition of artistic association and refusal to recognise

(1) The Minister of Culture shall decide to recognise or refuse to recognise an artistic association within twenty working days as of submission of the application.

(2) The Minister of Culture shall decide to refuse recognition of an artistic association if the artistic association fails to comply with the requirements of § 5 of this Act or its statutes fail to comply with the requirements of § 6 of this Act.

(3) A copy of the decision to recognise or refuse recognition shall be sent to the applicant by post, by sending an unregistered letter or a registered letter within five working days after the decision is made.

#### § 10. Revocation of recognition

(1) The Minister of Culture shall revoke a decision to recognise if:

1) the number of members of the artistic association falls below a threshold provided for in subsection 5 (1) of this Act or

2) the term for the elimination of deficiencies has been granted to the artistic association in the course of exercise of state supervision pursuant to this Act and the deficiencies have not been eliminated within the designated term and the official exercising state supervision makes a proposal for revocation or

3) the Minister of Culture has refused to allocate support to the artistic association from the state budget for the second time due to a reason provided for in subsection 13 (1) of this Act.

(2) A copy of the decision to revoke recognition shall be sent to the applicant by post, by sending an unregistered letter or a registered letter within five working days after the decision is made.

## § 11. Collection of information

The Minister of Culture shall maintain records on the recognised artistic associations and shall preserve documents submitted by artistic associations upon application for recognition and other information and documents subject to submission pursuant to this Act. If necessary, the Minister of Culture shall establish for such purpose a state agency register pursuant to the Databases Act (RT I 1997, 28, 423; 1998, 36/37, 552; 1999, 10, 155; 2000, 50, 317; 57, 373; 92, 597; 2001, 7, 17; 17, 77; 2002, 61, 375; 63, 387; 2003, 18, 107; 26, 158; 2004, 30, 204).

## § 12. Support for artistic association

(1) On the basis of a written application of an artistic association, support shall be allocated to the artistic association from the state budget. The amount of the support per one creative person who is a member of an artistic association per year is one fifth of the average wages per month which, according to the Statistical Office, was paid in Estonia during the year preceding the year of submission of the application.

(2) In order to receive support, an artistic association shall submit a written application together with the list of members of the artistic association to the Minister of Culture by 1 May of the budgetary year preceding receipt of the support.

(3) An artistic association shall use support for:

- 1) the payment of support to creative persons engaged in a liberal profession for creative activity provided for in this Act;
- 2) the payment of grants for the creative activities of creative persons and in-service training related thereto if the support is not fully used during a year for the purpose specified in clause 1) of this subsection.

(4) An artistic association and the Minister of Culture shall enter into a contract under public law regarding the allocation of support on the basis of the Administrative Co-operation Act (RT I 2003, 20, 117; 82, 552; 2004, 53, 367) and taking account of the specifications provided for in this Act. The following shall be set out in the contract:

- 1) the amount of the support;
- 2) the intended use of the support;
- 3) the rights and obligations of parties;
- 4) the procedure for the submission of a report on the use of the support allocated;
- 5) sanctions arising from violation of the contract;
- 6) the procedure for the amendment and termination of the contract;
- 7) the period of validity of the contract.

(5) A report on the use of support allocated during the preceding year shall be submitted by 1 March of the current year.

(6) An artistic association shall maintain separate records on support received pursuant to this section. If the amount of the support is not used for the purposes prescribed in the contract during the corresponding year, the artistic association has the right to use the rest during the following year. In such case, the contract specified in subsection (4) of this section shall be amended on the basis of the report of the artistic association.

(7) The Minister of Culture has the right to assign 5 per cent of the amount allocated to artistic associations from the state budget to the reserve for the performance of obligations provided for in subsections 19 (4) and (5) of this Act.



### § 13. Refusal to allocate support

- (1) The Minister of Culture refuses to allocate support if an artistic association has not used the previous support for the intended purpose or has failed to submit a report specified in subsection 12 (5) of this Act at the prescribed time.
- (2) An amount which is not used for its intended purpose by an artistic association shall be returned to the state budget.
- (3) If the Minister of Culture has refused to allocate support due to a reason specified in subsection (1) of this section, an artistic association has the right to apply for the support one year after the refusal.

### § 14. Rights of artistic association

- (1) An artistic association has the right to demand information on created works and performances from creative persons who are members of the artistic association pursuant to the procedure provided for in the statutes.
- (2) According to the Copyright Act and the statutes of an artistic association, the artistic association may be a collective management organisation which represents the proprietary and personal copyrights or related rights of its members.
- (3) In order to grant support for creative activity, an artistic association has the right to receive information from the Ministry of Culture regarding creative persons engaged in a liberal profession who apply for or receive support for creative activity from other artistic associations.

### § 15. Obligations of artistic association

(1) The management board of an artistic association shall maintain a register of creative persons who are members of the artistic association, in which the name, residence and personal identification code of a creative person, the day, month and year of registration as creative person, information regarding created works and performances, suspension of status of creative person and withdrawal or exclusion from the artistic association shall be entered. Other information may also be entered in the register if it is provided for in the statutes and is not in conflict with the law.

(2) An artistic association shall maintain a register of creative persons engaged in a liberal profession who receive support for creative activity, in which the name of a creative person receiving support, the period of receipt of support and, if necessary, other information shall be entered. Upon amendment of register data, the artistic association shall submit the amendments to the Ministry of Culture as and when necessary.

(3) An artistic association may pay grants prescribed for the creative activity of creative persons and complementary training related thereto to its members pursuant to subsection 12 (3) of this Act only if the creative persons do not receive the specified grant from any other artistic association.

(4) An artistic association shall collect information on works and performances created by its members (the title of the work, the time of creation, performance or publication of the work etc).

(5) If a decision to recognise an artistic association is revoked pursuant to subsection 10 (1) of this Act or the Minister of Culture refuses to allocate support to the artistic association due to a reason provided for in subsection 13 (1) of this Act, the artistic association is required to promptly submit to the Ministry of Culture information on persons who apply for and receive support for creative activity together with copies of the decisions to grant support for creative activity and information regarding support paid by that moment and copies of other documents which were the bases for the grant of the support.

## § 16. Conditions for application of support for creative activity

(1) A creative person engaged in a liberal profession who does not receive income from his or her creative activity has the right to receive support for creative activity for creative persons engaged in a liberal profession through the artistic association.

(2) A creative person engaged in a liberal profession has the right to receive support for creative activity for creative persons engaged in a liberal profession if he or she meets the following requirements:

- 1) is between the age of sixteen and pensionable age;
- 2) is not in public service or does not work under a contract of employment in Estonia or in a foreign state;
- 3) has not received income under a contract under the law of obligations at least during the month preceding application for the support for creative activity;
- 4) is not enrolled in daytime or full-time study at an educational institution;
- 5) does not serve in the Defence Forces or alternative service;
- 6) does not receive a state pension or a pension paid by a foreign state;
- 7) does not receive an unemployment insurance benefit pursuant to the Unemployment Insurance Act (RT I 2001, 59, 359; 82, 488; 2002, 44, 284; 57, 357; 89, 511; 111, 663; 2003, 17, 95; 88, 591);
- 8) does not receive a parental benefit pursuant to the Parental Benefit Act (RT I 2003, 82, 549).

## § 17. Committee to grant support for creative activity

(1) An artistic association may form a committee to grant support for creative activity for creative persons, which consists of at least three members of the artistic association who are elected in the general meeting.

(2) A committee specified in subsection (1) of this section shall comprise an official of the Ministry of Culture who is appointed by the Minister of Culture and represents the state.

(3) If an artistic association has not formed a committee specified in subsection (1) of this section, the functions of the committee shall be performed by the management board of the artistic association which shall involve the official appointed by the Minister of Culture as a representative of the state.

#### § 18. Payment of support for creative activity

(1) In order to receive support for creative activity, a creative person engaged in a liberal profession shall submit a written application to the management board of the artistic association.

(2) A creative person engaged in a liberal profession who belongs to several artistic associations at the same time has the right to receive support for creative activity through one artistic association only.

(3) An artistic association shall decide on the grant of support within fifteen working days as of submission of the application.

(4) If support for creative activity is granted, the support shall be paid to a creative person engaged in a liberal profession as of the date of submission of the application.

(5) The amount of support for creative activity paid to a creative person engaged in a liberal profession monthly shall be the minimum wage established by the Government of the Republic pursuant to the Wages Act (RT I 1994, 11, 154; 1995, 12, 120; 1999, 29,

397; 2000, 10, 59; 40, 248; 2001, 42, 233; 50, 287; 2002, 61, 375; 62, 377; 111, 662; RT III 2003, 2, 16; RT I 2003, 88, 591; 2004, 71, 504). The amount of social tax which must be paid according to the Social Tax Act (RT I 2000, 102, 675; 2001, 50, 285; 59, 359; 79, 480; 91, 544; 95, 587; 2002, 44, 284; 62, 377; 111, 662; 2003, 82, 549; 88, 587 and 591; 2004, 37, 252) shall be added thereto.

(6) Support for creative activity shall be paid once a month.

(7) A creative person engaged in a liberal profession has the right to receive support for creative activity specified in this section for six months. Upon repeated application for support, at least two years must have passed after the period during which the previous support was paid. The provisions of this subsection also apply if the creative person applies for support from another artistic association and is a member of the artistic association at the same time.

(8) A creative person engaged in a liberal profession who receives support for creative activity set out in subsection (1) of this section does not have the right to address the local employment office or employment service to receive an unemployment benefit, single benefit or a stipend during the period when he or she receives the support.

(9) If circumstances arise due to which a creative person engaged in a liberal profession to whom support for creative activity is paid does not meet the requirements provided for in § 16 of this Act, the creative person is required to promptly notify the artistic association thereof.

#### § 19. Specifications for payment of support for creative activity

(1) A creative person engaged in a liberal profession who does not belong to any artistic association but meets the requirements specified in subsection 16 (2) of this Act and wishes to apply for support for creative activity shall submit a written application to the Ministry of Culture.

(2) The Ministry of Culture shall submit an application for prompt decision-making to an artistic association representing the corresponding artistic field, which shall assess whether a creative person complies with the requirements of this Act and shall grant the support. The artistic association shall make a decision on payment of the support for creative activity within fifteen working days. If there is no artistic association representing the corresponding artistic field, the Ministry of Culture shall designate an artistic association to process the application.

(3) An artistic association shall refuse to pay support if the applicant does not meet the requirements specified in § 3 of this Act or has not been active in the corresponding artistic field during last three years or his or her works or performances have not been published within the meaning of §§ 9 and 10 of the Copyright Act during that period.

(4) Support for creative activity which an artistic association has granted pursuant to this section shall be paid by the artistic association out of the funds allocated therefor for specific purposes by the Ministry of Culture. Support for creative activity shall be paid pursuant to the procedure provided for in § 18 of this Act.

(5) If the Ministry of Culture refuses to allocate support to an artistic association due to a reason specified in subsection 13 (1) of this Act or if a decision to recognise an artistic association is revoked pursuant to § 10 of this Act, the Ministry of Culture shall ensure the payment of support to creative persons engaged in a liberal profession to whom payment of support for creative activity has been commenced by the artistic association or to whom the artistic association has decided to grant support.

(6) In the case specified in subsection (5) of this section, the Ministry of Culture shall pay support for creative activity pursuant to the procedure provided for in subsections 18 (3)-(7) of this Act.

§ 20. Termination of payment of support for creative activity

(1) Payment of support for creative activity shall be terminated if a creative person engaged in a liberal profession has, upon application for the support for creative activity, knowingly submitted false information to an artistic association or the creative person engaged in a liberal profession no longer meets the requirements provided for in § 16 of this Act.

(2) If termination of payment of support for creative activity is based on the knowing submission of false information, the creative person engaged in a liberal profession shall lose the right to apply for support for creative activity for three years.

(3) A creative person engaged in a liberal profession is required to return support for creative activity received as a result of submission of false information.

#### § 21. Supervision

(1) The Ministry of Culture shall exercise state supervision over the performance of obligations provided for in § 6, subsections 12 (3)-(6), §§ 15, 17 and 18, subsection 19 (4) and § 20 of this Act. The Minister of Culture shall designate the official exercising state supervision.

(2) Officials exercising supervision have the right to:

1) demand information and documents from an artistic association regarding works and performances created by creative persons who are members of the artistic association;

2) examine documents submitted by a creative person engaged in a liberal profession in order to receive support for creative activity;

3) demand the documents which are the basis for preparation of a report submitted on the basis of a contract specified in subsection 12 (4) of this Act.

## § 22. Precepts

(1) If it becomes evident in the course of state supervision that an artistic association fails to comply with the requirements arising from the provisions specified in subsection 21 (1) of this Act, a supervisory official shall issue a precept to the artistic association for elimination of the deficiencies and shall designate a term therefor.

(2) A precept shall contain the following information:

- 1) the name of the artistic association to which the precept is issued;
- 2) information concerning the violation with a reference to the sections of this Act and the requirement to bring the situation into conformity with this Act;
- 3) the reason for issue of the precept;
- 4) the term for compliance with the precept;
- 5) the name and position of the official who prepared the precept, the date of issue of the precept and the signature of the official;
- 6) a notation concerning the possibilities, terms and procedure for the contestation of the precept.

(3) If an artistic association fails to comply with a precept, an official exercising supervision may impose penalty payment pursuant to the Substitutive Enforcement and Penalty Payment Act (RT I 2001, 50, 283; 94, 580) or make a proposal to the Minister of Culture for revocation of the recognition of the artistic association pursuant to clause 10 (1) 2) of this Act. The upper limit for a penalty payment is 10 000 kroons. Imposition of the penalty payment does not preclude making of a proposal for revocation of the recognition of the artistic association.



## § 23. Implementation of Act

The term for the submission of applications for support for artistic associations provided for in subsection 12 (2) does not apply during the year when this Act enters into force. The Minister of Culture shall establish the term for submission of the specified applications within one month after the entry into force of the Act and the term shall be published on the website of the Ministry of Culture.

## § 24. Amendment of Taxation Act

Clause 28) is added to § 29 of the Taxation Act (RT I 2002, 26, 150; 57, 358; 63, 387; 99, 581; 110, 660; 111, 662; 2003, 2, 17; 48, 341; 71, 472; 82, 554; 88, 591; 2004, 2, 7; 28, 188 and 189; 30, 208; 45, 319; 56, 403) worded as follows:

“28) to an artistic association for the verification of income received by creative persons in connection with the grant of support for creative activity for creative persons engaged in a liberal profession pursuant to the Creative Persons and Artistic Associations Act.”

## § 25. Amendment of Income Tax Act

The Income Tax Act (RT I 1999, 101, 903; 2004, 59, 414) is amended as follows:

1) in subsection 11 (4), the words “and artistic associations” are inserted after the word “associations”;

2) clause 13 (3) 1) is amended and worded as follows:

“1) compensation for official travel, accommodation and other expenses and daily allowances paid to a public servant, an employee or a member of the management or controlling body of a legal person under the conditions and within the limits established

by the Government of the Republic, and compensation for moving expenses arising from appointment to a position located in another area and compensation for official travel and accommodation and daily allowances paid to a creative person for business trips relating to the creative activity of the creative person by an artistic association;”;

3) the text of subsection 14 (2) which s in brackets is amended and worded as follows:

“(including the professional activity of a notary, a bailiff or, in the case specified in subsection 9 (3) of the Sworn Translators Act (RT I 2001, 16, 70; 2002, 61, 375; 102, 600; 2003, 18, 100; 2004, 14, 91; 30, 208), a sworn translator and the creative activity of a creative person)”;

4) in subsection 14 (6), the words “creative persons engaged in a liberal profession” are inserted after the words “notaries,”.

#### § 26. Amendment of Social Tax Act

Clause 2 (1<sup>2</sup>) of the Social Tax Act (RT I 2000, 102, 675; 2001, 50, 285; 59, 359; 79, 480; 91, 544; 95, 587; 2002, 44, 284; 62, 377; 111, 662; 2003, 82, 549; 88, 587 and 591; 2004, 37, 252) is amended and worded as follows:

“(1<sup>2</sup>) The provisions of this Act concerning sole proprietors entered in the commercial register or registered with a regional tax centre of the Tax and Customs Board also apply to notaries and bailiffs and to sworn translators in the case specified in subsection 9 (3) of the Sworn Translators Act (RT I 2001, 16, 70; 2002, 61, 375; 102, 600; 2003, 18, 100; 2004, 14, 91; 30, 208) and to creative persons engaged in a liberal profession.”

#### § 27. Entry into force of Act

This Act enters into force on 1 January 2005.

<sup>1</sup> RT = *Riigi Teataja* = *State Gazette*