

Permanent Mission of Estonia
Geneva

No. 10-6/5

The Permanent Mission of the Republic of Estonia to the United Nations and Other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and in response to the Latter's letter with reference Cultural Rights/2612/MB from 24 October 2012, has the honour to forward the reply of the Government of Estonia to the questionnaire on the right to the artistic freedom, elaborated by the Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed, pursuant to the Human Rights Council resolution 19/6 .

The Permanent Mission of Estonia to the United Nations and Other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 7 January 2013



Enclosure: 6 pages

OHCHR REGISTRY

- 9 JAN 2013

Recipients :SPD.....
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Office of the High Commissioner for Human Rights
GENEVA

QUESTIONNAIRE ON THE RIGHT TO ARTISTIC FREEDOM

ESTONIA

1. Is the right to artistic freedom expressly protected under the Constitution in your country? If so, please provide the relevant provisions, or if needed, a translation of these provisions.

The Constitution of the Republic of Estonia declares that science and art and their teachings are free (paragraph 38); the rights of an author in respect of his or her work are inalienable, the national government protects authors' rights (Section 39); Everyone has the right to freely disseminate ideas, opinions, beliefs and other information by word, print, picture or other means. This right may be circumscribed by law to protect public order, public morality, and the rights and freedoms, health, honor and good name of others. This right may also be circumscribed by law in respect of public servants employed by the national government and local authorities, or in order to protect a state secret, trade secret or information received in confidence which has become known to the public servant by reason of his or her office, and to protect the family and private life of others, as well as in the interests of the administration of justice. There is no censorship (Section 45¹).

2. If relevant, please provide a brief summary of important decisions relating to artistic freedom adopted by judicial authorities in your country over the last ten years.

No major decisions concerning artistic freedom have been adopted by judicial authorities in Estonia in the last ten years.

3. Has your country adopted any official policy relating to art and artistic freedom? If so, please provide a summary of the main elements included in such a policy.

No.

4. Is there a legal definition of "artist" in your country? If so, does this definition have any bearing on the status of artists, as well as their artistic freedom? Do organizations of artists agree with such definition?

The Creative Persons and Artistic Associations Act² defines the term „artist“ as follows: „For the purposes of this Act, a creative person is an author or a performer within the meaning of the Copyright Act who acts in the field of visual or applied arts, set design, audiovisual art, stage art, literature, music or architecture (Section 2 (1)).“

However, this definition defines the term only in the context of a particular act, regarding governmental support to the creative persons through artistic associations, and does not expand to other domains. But in practice, this term is often used in other contexts as well. Such a definition of the term does not affect in any way the artistic freedom, but is rather directed towards guaranteeing social warranties and government support to creative activity. Artistic associations were consulted when this provision was drafted.

¹<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X0000K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=p%F5hiseadus>

²<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90005K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=loovisikute>

5. Is there an official legal definition of “artisans” and craftsmen/women? If so, which consequences does this definition have on the status of artisans and craftspeople in terms of their artistic freedom? Do organizations of artisans/craftswomen agree with such definition?

No.

6. In your view, what are the main impediments encountered by artists in their work in your country?

There have been cases, where certain television broadcasts or their extracts have not been broadcasted, primarily for ethical reasons. These cases are regulated by the Media Services Act³, according to which a media service provider has a right to choose freely the content and placement of its programme and the programme service or the programme catalogue in accordance with the law and conditions specified by the activity license for the provision of television and radio services (Section 13).

The media service provider has the editorial responsibility, which means the exercise of effective control both over the selection, content and structure of the programmes and over their organization either in a programme service or a programme catalogue (Section 6).

These restrictions derive from section 19 of the given Act (for example, Section 19 paragraph 1 brings out that upon provision of media services the programmes shall not call for the incitement to hatred on grounds of sex, racial or ethnic origin, beliefs or religion or degrading the lawful behaviour or to call for violation of law.

7. In this regard, what measures are required to combat these impediments?

In terms of market regulation, the most helpful measures would be those that support small businesses. In other words, measures that would give creative persons the means for more active and target group specific marketing. Also, law modifications that foster sponsorship would allow finding additional resources. In the current Estonian legislation, the Income Tax Act⁴ has a point that frees the gifts and donations made by legal persons in certain amount from the income tax (Section 49) and that has increased the interest of entrepreneurs to sponsor culture.

8. What support is provided by State authorities, including public institutions and semi-autonomous bodies to artists, in particular financial support for artistic creations and exhibitions? What are the specific mechanisms to ensure that those benefiting from State support enjoy artistic freedom and that all artists compete equally for State resources, without discrimination based on, for example, gender, ethnic origin, location in State territories, political opinion or belief?

Creative Persons and Artistic Associations Act⁵ has been adopted that supports creative persons through scholarships and subsidies that free-lance creative persons can receive for creative activity in case of lack of income and as an alternative to unemployment benefit. The free-lance status of

³<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXXXX01K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=meediateenuste>

⁴<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40007K15&keel=en&pg=1&ptyyp=RT&tyyp=X&query=tulumaksuseadus>

⁵<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X90005K1&keel=en&pg=1&ptyyp=RT&tyyp=X&query=loovisikute>

creative persons does not allow them to qualify for the unemployment benefit similarly to persons active in other fields (not working under employment contracts etc), therefore a special system has been created for creative persons. To apply for this type of support, the applicant (creative person) has to be registered in the business register.

Most creative scholarships and project support is given by the Cultural Endowment of Estonia. The Endowment was established to support different fields of culture in Estonia. Made up of eight different foundations, a Traducta and an Open Estonian Book programme, the Endowment covers the breadth of Estonia's cultural life.

The eight foundations concern: art, music, drama, film, sports, literature, architecture and the national culture foundation. Every foundation consists of seven independent experts, who take decisions. Four times a year they have a meeting, in which they look through all received applications and decide, which projects they will support. In addition they also provide creative scholarships to support individuals.

The experts are first nominated by different cultural organisations and the Minister of Culture makes the final decision regarding nominating of the board.

In each of Estonia's 15 counties, the Endowment has a local working group. These local groups consist of five different experts who are nominated on the county level and are then chosen by the Endowment. These local expert groups support all fields of culture, mainly events taking place within the county.

The money that is handed out comes in directly from taxes, with the rate being set by the government.

The Cultural Endowment of Estonia works in accordance to the Cultural Endowment of Estonia Act⁶.

9. Under national law, what kind of legitimate restrictions can be imposed on artistic freedoms? Please provide information on most recent relevant cases in your country, if any.

Legitimate restrictions have not been imposed on artistic freedom. But the authors of work have to follow the protection of personal rights. According to the Law of Obligations Act⁷ (Section 1046) the defamation of a person, inter alia by passing undue judgement, by the unjustified use of the name or image of the person, or by breaching the inviolability of the private life or another personality right of the person is unlawful.

Also, the Copyright Act⁸ has been adopted that regulates the authors' moral and financial rights towards created work. This restriction applies for example for the use of other authors' creation in your own work.

The most important principles regarding the use of others' creation are the following:

- According to the Copyright Act the author of the work has moral rights (Section 12):
- The right for the integrity of the work, that is the opportunity to make, to give permission to make or to forbid others to make whatever changes in the work, its title or in the marking of the author's name and the right to rebut the changes made without the authors' permission.

⁶<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X1015K6&keel=en&pg=1&ptyyp=RT&tyyp=X&query=eesti+kultuurkapitali+seadus>

⁷<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30085K4&keel=en&pg=1&ptyyp=RT&tyyp=X&query=V%F51a%F51gusseadus+%28seisuga+18%2E07%2E2011%29>

⁸<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X40022K9&keel=en&pg=1&ptyyp=RT&tyyp=X&query=autori%F51guse>

- The right for additions to the work, that is the opportunity to allow or forbid the addition of other authors' work (illustrations, forewords, epilogues, commentaries, explanations, new parts etc) to your own work.
- The author's moral rights cannot be taken forcibly away from the author (for example, by means on nationalizing).
- Authorship is a benefit that lasts beyond time: „The authorship of a certain work, the name of the author and the honour and reputation of the author shall be protected without a term.” (Copyright Act Section 44 paragraph 1).
- The most important economic rights of the author are the following (Copyright Act Section 13):
 - The right of reproduction of work (*reproduction right*), which deals with the author's right to allow or forbid making copies of his/her work. This is the main right assuring financial benefit for the author.
Illegal reproduction is called piracy and an illegal copy is a pirated copy (Copyright Act Section 80)
 - The right of public performance of the work (*public performance right*) is a classical right of the author. To perform publicly other author's song, instrumental piece, lecture, poetry, play, extract of a monograph etc, requires previous consent of the author.
 - The right to make adaptations, modifications or other alterations of the work (*right of alteration of the work*). For example, someone wishing to change the work of music by an Estonian author or by an author from any other signatory state of the Berne Convention in whatever genre, requires previous consent of the author.
 - The right of exhibition of the work in public (*right of exhibition of the work*) means that the author's work can be exhibited at exhibitions, shown in television or in film etc only with the previous consent of the author.

10. Are there any legal provisions or traditions in your country which restrict certain art forms, including the use of instruments and songs, or public display/performances? If so, do such restrictions apply to certain categories of people, for example on the ground of, gender, ethnic origin or age?

The Act to Regulate Dissemination of Works which Contain Pornography or Promote Violence or Cruelty⁹ brings out two important aspects under Section 1:

1. Dissemination and exhibition to minors of works which contain pornography or promote violence or cruelty is prohibited.
2. Transmission of television or radio broadcasts which contain pornography or promote violence or cruelty, by persons who have the right to transmit television or radio broadcasts in Estonia, is prohibited.

The content of the work is defined in Section 7 of the given act that declares: “For the purposes of this Act, determination of the content of works means a decision on whether or not a work contains

⁹<http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X2008K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=pornograafilise+sisuga>

pornography or promotes violence or cruelty". This decision is made by an expert committee that is active at the Ministry of Culture.

11. Please indicate whether specific bodies or institutions, either state or non-state, are mandated to decide on possible restrictions to be imposed on artworks (e.g. film censor boards). If so please

- (a) provide information about the membership, terms of reference and appointment procedures of these bodies;**
- (b) indicate whether these bodies disclose information publicly and to what extent they are held accountable for their decisions and to whom; and**
- (c) indicate whether an appeal mechanism judicial, quasi-judicial or other, is in place.**

In Estonia, the right to artistic freedom is not restricted by law.

12. Please provide information on the possibilities for artists to perform street art and/or to use public spaces in general for their artistic performances, such as public gardens. What are the approval procedures for this?

According to the Local Government Management Act the local government unit has the right to manage questions concerning local life and the obligation to guarantee the realization on everyone's rights and freedoms on its territory. Every local government unit (city, parish) adopts public service regulations that regulate whether permission for a performance is necessary. The procedures are different in each local government unit. Usually an application is filed, which will be looked through by reasonable deadline and permission or grounded denial is given, if the applicable activity does not correspond with acts of law.

13. Please provide a short summary of any public debates that may have taken place at the level of legal/policy making bodies relating to the impact of free market policies on artistic freedoms, and/or on achieving the balance between private/public sponsorship.

There have been no such public debates.

14. Does your country have an independent artists' council, representing professional artists? If so, does the State consult the council on matters related to the status of artists or has the State developed channels of regular communication (through for instance consultations, debriefings, public hearings, etc.) between relevant authorities and independent organizations representing artists?

In Estonia, there are different creative unions aiming to develop particular creative fields and to support the creative activities of its members. As of November 2012, the following creative unions are officially recognized (the two criteria for the recognition are as follows: the union has to have at least 50 members representing the given creative field; the main function of the union is the mediation of state support to the members):

- Field „Music“ - Estonian Performers Association, Estonian Composers' Union, Association of Estonian Professional Musicians;
- Field „Performing Arts“ – Association of Estonian Scenographers, Estonian Theatre Directors' Union, Association of Professional Actors of Estonia, Estonian Professional Dancers Union, The Union of Estonian Dance Artists;

- Field „Fine arts“ - The Estonian Artists' Association, Estonian Graphic Designers' Union, Estonian Association of Designers;
- Field „Film“ - Estonian Filmmakers' Union;
- Field „Literature“ - Estonian Writers' Union;
- Field „Architecture“ - The Union of Estonian Architects, Estonian Interior Architects Union.

In addition to creative unions, the NGO Estonian Cultural House (Eesti Kultuuri Koda) is active since 2011, uniting „legal and private persons with creative background or interests with the goal to preserve and improve Estonian culture”.

The main working method of the House is working groups that are summoned according to topical themes. There are currently 6 active working groups, preparing certain recommendations for policy changes with an aim of improving the state of the creative persons. Even though the working groups are politically independent, regular consultation and discussion with representatives of ministries takes place.

15. Are there any State or artists' organizations in your country established to collect the income from artistic creations/performances for re-distribution to artists? What is the annual in-and outflow of money to and from such organizations?

According to the Copyright Act, the authors are represented by private collective management organizations, which authors join voluntary. These organizations support the rights of their authors and on authors' mandate collect a fee from the users of their creative work and provide it to the authors of the work according to commonly agreed conditions. These are private organizations and the State does not have an overview of their financial turnover. In Estonia, the Estonian Authors'¹⁰ Society is one example of collective management organizations.

¹⁰ <http://www.eau.org/?lang=eng&PHPSESSID=15d1bf85fe50d36ed48899e6b8a0de98>