

Act XCIX of 2008

on the support and special employment rules of performing arts organisations¹

The Act expresses the recognition that any live, present time performing arts work is a social activity, which cannot be replaced with anything and which nurtures and develops the cultural and intellectual state of the society, the native language culture, social self-awareness and solidarity, and promotes the continuation of European, including especially the Hungarian cultural history. The purpose of this Act is to support the operation and development of high-quality performing arts, theatre, dance and music in Hungary.

In order to increase the diversity and values of theatre, dance and music, to provide access to performances and concerts for a broad audience, to promote the education of children and youth into an audience receptive of performing arts, to assist the international presence of Hungarian performing arts, to nurture the cross-border Hungarian culture, to support the artistic activities of national and ethnic minorities in Hungary, to develop performing-artistic institutions, to create a support system for the effective use of public funds and to enforce the cultural rights of citizens laid down in the Constitution, Parliament of the Republic of Hungary has adopted the following Act:

CHAPTER I

GENERAL PROVISIONS

Title 1

Purpose of the Act

Article 1

(1) The purpose of this Act is to:

- a) promote freedom of performing arts life,
- b) contribute to the achievement of the diversity of artistic expressions,
- c) assist citizens, especially children and young people to have access to theatre, dance and musical works and performances,
- d) promote the effective and transparent use of public funds,
- e) encourage the use of extra-budgetary funds in the operation, running and development of performing arts organisations,
- f) promote the creation of Hungarian language products, including also the value creating activities of the cross-border performing arts organisations, the performance of works of Hungarian authors, the creation and performance of works created in the language of ethnic minorities and thereby increase the cultural assets and heritage of the nation and the country,
- g) support the national and international mobility of theatre, dance and music and presentation of high-quality foreign performances in Hungary and the performance of Hungarian and other works created in Hungary or abroad,
- h) encourage the cultural realignment of areas lacking performances and concerts of artistic value by creating opportunities to reduce the social gap and segregation,
- i) support the professional documentation and research activities, as well as to
- j) support the value creation activities of performing arts groups.

(2) In order to achieve these objectives, the Act:

- a) lays down the rules for central budgetary support granted to theatre, dance and music organisations,
- b) defines the regulatory and other public tasks related to performing arts organisations, and
- c) establishes the special employment rules applicable to people employed by performing arts organisations.

Title 2

¹ Parliament adopted the Act on its session of 8 December 2008.

Scope of the Act

Article 2

- (1) The scope of this Act covers
- a) the performing arts organisations,
 - b) the operators of performing arts organisations,
 - c) the natural persons, who are either employees or public employees of performing arts organisations
 - d) any organisations performing administrative, regulatory and services tasks in relation to the operation of the performing arts organisations.
- (2) The provisions of this Act shall not affect the provisions of Act LXXVI of 1999 on Copyright.

Title 3

Principles of the Act

Article 3

(1) In order to promote the enforcement of the right to culture provided in the Constitution, the state shall operate performing arts organisations funded from the central budget and, in accordance with the terms and conditions laid down in this Act, assist municipalities and local and regional minority governments (hereinafter together 'local government') in establishing the conditions of artistic performance activities in the framework of their voluntarily accepted local public services or minority public services, and shall furthermore support the renewal of other performing arts activity and the efforts of performing arts organisations aiming at diversity.

(2) The local governments shall perform their tasks defined under Paragraph (1) by operating or supporting performing arts organisations (public service contract).

CHAPTER II

RIGHTS RELATED TO PERFORMING ARTISTIC ORGANISATIONS

Title 1

The Minister

Article 4

The Minister responsible for culture (hereinafter 'Minister') shall perform sectoral tasks related to performing arts activities as defined in this Act. In this context the Minister's tasks shall be especially the following:

- a) to prepare draft regulations on performing arts fields within the process of related legislation and regulate the issues of support of performing arts organisations in a decree, based on the empowerment granted in this Act,
- b) to perform the tasks related to the central budgetary support of the performing arts organisations as specified in this Act and in the Budget Act,
- c) to exercise the founder and supervisory rights in performing arts organisations that operate as central budgetary institutions in compliance with the provisions of the Deed of Foundation and to support the operation of performing arts non-profit organisations that operate with an equity participation of the state (hereinafter together 'performing arts organisation operated by the state'),
- d) to enter into maximum five-year, renewable, public service agreements for specific artistic tasks, with nationally and internationally highly recognised performing arts organisations which boast extremely high quality artistic performance and are operated without any equity participation of the state or local government,
- e) to notify the decision-makers on his professional opinion in relation to significant professional changes in the core activity, the restructuring, merger or termination without a legal successor of 1st-5th category theatres, ballet or dance groups and 1st category orchestras and choirs, and
- f) to operate the Performing Arts Council.

Title 2

The Performing Arts Council

Article 5

(1) The Performing Arts Council (hereinafter 'PAC') is the Minister's body for making proposals, forming opinions and preparing decisions.

(2) The tasks of the PAC shall be in particular:

a) to make proposals on regulatory issues concerning the performing arts activity upon the request of the Minister or its own initiative,

b) to monitor the status and opportunities of performing arts, with special regard to the support system of performing arts organisations and to make proposals for a review if it is necessary,

c) to form an opinion on the allocation of the central budgetary support based on the performance data of the previous budget year,

d) to delegate members into the professional committee in the course of the call for applications for the position of the executive officer of any performing arts organisation employer based on the proposal of the competent professional board,

e) to form a preliminary opinion of the conclusion of any contract defined under Article 4 d) upon the request of the Minister,

f) to assist the Minister before elaborating his position in terms of the provisions of Article 4 e) by forming a professional opinion,

g) to propose the issue of a restricted tender to the Minister for the support of performing arts organisations with outstanding artistic performance in a specific season,

h) to monitor and evaluate the implementation of its proposals and

i) to prepare annual reports on its activities.

(3) The PAC shall consist of 22 members. The mandate of each member shall be three years; any shorter mandate shall be defined by the delegating organisations.

(4) Members of the PAC:

a) recognised artists and artistic experts invited by the Minister on the basis of the proposals of artistic professional organisations of the performing arts fields concerned which operate with a large number of members and the registered performing arts organisations ensuring that independent performing arts organisations are also represented (theatrical arts 5, dancing arts 3, music 3) – in total 11 members,

b) delegates of performing arts higher education institutions – 3 members,

c) 1 delegate each, in total 2 members, from the nationally representative arts trade unions,

d) 2 members delegated by the national interest representation organisations of operators of performing arts organisations, 1 member delegated by the Budapest Municipality and 1 member delegated by the national minority local governments,

e) 1 member representing the Minister responsible for public finances,

f) 1 member representing the Minister.

(5) Delegates of cross-border Hungarian performing arts organisations may attend the meetings of the PAC with a consultation right.

(6) The PAC shall set up three permanent professional boards for the review of issues related to theatrical and dancing arts and music, including especially those listed under Paragraph (2) and for making statements and proposals.

(7) The PAC shall establish its own rules of operation (rules of procedures) with the approval of the Minister.

(8) The statements and proposals of the PAC shall be public statements.

(9) The members of the PAC shall not receive any remuneration; its operation shall be funded within the budget of the performing arts public administrative agency.

Title 3

The Performing Arts Public Administrative Agency

Article 6

(1) The performing arts public administrative agency shall execute the following public administrative and services tasks in relation to the operation of the performing arts organisations:

a) to keep an administrative register on the performing arts organisations operated by the state and requesting support in compliance with the provisions of this Act,

b) to classify the registered performing arts organisations according to the provisions of this Act,

c) to certify eligibility for support and issue the support certificates for tax allowances, defined under point 38 of Article 4 of Act LXXXI of 1996 on Corporate Tax and Dividend Tax,
d) to perform data supply on performing arts activities,
e) to perform the administrative tasks related to the operation of the PAC,
f) to perform all other tasks defined in this Act or in any other legal regulation based on the authorisation granted in this Act.

(2) The procedures defined under Paragraph (1) a)-c) shall be governed by the provisions of Act CXL of 2004 on the General Rules of Public Administrative Proceedings and Services.

(3) The registration and classification activities of the performing arts public administrative agency shall be subject to a separate administration service fee, to be defined in a separate legal regulation.

CHAPTER III

REGISTRATION AND CLASSIFICATION OF PERFORMING ARTS ORGANISATIONS

Article 7

(1) The performing arts public administrative agency shall keep a register of performing arts organisations operating as budgetary institutions or public benefit organisations, as defined in a separate act.

(2) The register shall contain the name, type of organisation, registered seat, premises, company registry number, court registration number or master registry number and classification category (Articles 10-11) of the performing arts organisation, and the name, type of organisation and registered seat of the operator. These data shall be public and accessible on the website of the performing arts public administrative agency.

Article 8

(1) With the exception stated in Paragraph (2), the registration procedure shall start with an application. The application shall be submitted by the operator of the performing arts organisation or, if there is no such party, then the representative of the organisation.

(2) For performing arts organisations operated by the state the registration procedure shall be carried out ex officio.

Article 9

(1) Provided that the data defined under Article 7 have been supplied and certified, the performing arts public administrative agency shall register the performing arts organisation and, with the exception defined under Paragraph (2), classify it into a category based on the data supplied on the classification form in compliance with the provisions of a separate legal regulation.

(2) The performing arts public administrative agency shall not classify performing arts organisations which are operated by the state or possess a public service agreement defined under Article 4 d).

Article 10

(1) Any theatre or puppet theatre providing at least 180 performances and creating at least two premieres with their own company a year, with at least 75% of the performances being own performances of the theatre or the puppet theatre, shall be classified into the 1st category.

(2) The following shall be classified into the 2nd category:

a) any production theatre, which gives at least 100 performances and creates at least two premieres a year, and

b) any host theatre, which gives at least 140 performances a year and at least 30% of the performances are its own performances.

(3) Any ballet or dance group giving at least 50 ballet, dance or motional arts performances a year shall be classified into the 3rd category.

(4) The following shall be classified into the 4th category:

a) any theatre or puppet theatre giving at least 100 performances and creating at least two premieres with their own company a year and, with at least 75% of the performances being the own performances of the theatre or the puppet theatre, and

b) any host theatre, which gives at least 100 performances a year and at least 30% of its performances are its own performances.

(5) Any open-air theatre and national and ethnical minority theatre not classified elsewhere, which gives at least 20 theatrical performances, or has at least 50,000 paying spectators and creates at least one premiere a year shall be classified into the 5th category.

(6) A further condition of classification into the 1st-5th category shall be that the performing arts organisation

a) operates as a budgetary institution of the local government or has a public service agreement concluded with the local government, which is valid during the term of use of the central budgetary support defined in this Act, and

b) the employer's executive officer has been appointed in compliance with the rules of this Act applicable to the organisation.

(7) Any independent theatre, which has been operating for at least two years and does not satisfy the criteria of classification into the 1st-5th categories, shall be classified into the 6th category.

Article 11

(1) Any symphonic orchestra, chamber symphonic orchestra, chamber music orchestra (hereinafter together 'orchestra'), which gives at least 50 concerts a year, and any choir that gives at least 40 concerts a year shall be classified into the 1st category.

(2) A further condition of classification shall be that the performing arts organisation

a) operates as a budgetary institution of the local government or has a public service agreement concluded with the local government, which is valid during the term of use of the central budgetary support defined in this Act, and,

b) at least 80% of its members are musicians or singers with a relevant higher education qualification in music,

c) disposes of the physical conditions required for the activities, as defined in the relevant legal regulations,

d) achieved the number of paying viewers defined by law in the year preceding the current year, and

e) the employer's executive officer has been appointed in compliance with the rules of this Act applicable to the organisation.

(3) Any orchestra and choir, which has been operating for at least two years and satisfies the requirements under Paragraph (2) c) and d) shall be classified into the 2nd category.

Article 12

(1) The operator of the performing arts organisation or, if there is no such party, then the representative of the organisation shall report any change in the data used as the basis of registration and classification to the performing arts public administrative agency in accordance with the provisions of a separate legal regulation within fifteen days from the change (gaining cognisance of such change).

(2) Following the classification the operator or, if there is no such party, then the representative of the performing arts organisation shall provide data according to the classification form defined in a separate legal regulation, by 31 March each year.

(3) If as a result of any change in its data, a performing arts organisation must be classified in another category, the performing arts public administrative agency shall launch an ex officio procedure without an application.

(4) If the change reporting obligation defined in Paragraph (1) and the data supply obligation defined in Paragraph (2) is not fulfilled, the performing art public administrative agency shall impose a HUF 50,000 fine on the support applicant.

(5) If a performing arts organisation should be classified into a different category but the operator or, if there is no such party, then the representative of the performing arts organisation, fails to fulfil the required data supply by the deadline defined under Paragraph (1) or (2), or supplies false data, then any consequential unlawfully used central budgetary support shall be repaid in accordance with the provisions of Article 64/B(1)-(2) of Act XXXVIII of 1992 on Public Finances.

Article 13

A performing arts organisation shall be deleted from the register if

a) the performing arts organisation does not satisfy the organisational conditions defined as a requirement for registration under Article 7 (1),

b) it is requested by its operator or, if there is no such party, then the representative of the organisation,

c) the performing arts organisation has been terminated without a legal successor,

d) for five years from registration the performing arts organisation, other than a performing arts organisation operated by the state in compliance with Article 4 c) or with a public service agreement defined under Article 4 d), did not receive any support defined in this Act.

Article 14

Within the framework of the application of this Chapter, a separate legal regulation may also require the registration of other data not constituting personal data, which are required for the achievement of the objectives stated in the Act.

CHAPTER IV

SUPPORT OF PERFORMING ARTS

Title 1

The Bases of the Support System

Article 15

(1) Pursuant to the provisions of this Act, support may only be granted in accordance with decision N 357/2007 of the European Commission concerning state aid provided from the appropriations managed within the budget chapter of the Ministry of Education and Culture and from the National Cultural Fund.

(2) Central budgetary support under this chapter may be granted to the operator of a performing arts organisation operating as a budgetary institution or a public benefit organisation qualifying as such according to a separate act, or if there is no such party, then the performing arts organisation.

(3) With the exception stated in Paragraph (4), registration by the performing arts public administrative agency shall be a precondition for the support.

(4) A performing arts organisation not contained in the register shall be also eligible for support under a call for tenders issued in compliance with Article 21.

(5) The total support granted from any subsystem of the state budget shall not be higher than the eligible expenses. The eligible expenses include the direct and indirect expenses defined in a decree by the Minister, and incurred and certified in relation to the realisation of the support objectives stated in this Act.

(6) The data related to the central budgetary support and the data defined under Article 7 (2) (with the exception of personal data) shall constitute data of public interest and shall be accessible for anyone on the website of the performing arts public administrative agency.

Title 2

Amount and Conditions of Use of the Central Budgetary Support for Classified Theatres, Ballet and Dance Groups

Article 16

(1) Operators of theatres and puppet theatres classified into 1st and 2nd categories shall be entitled to central budgetary support, which shall consist of operator incentive contribution and arts incentive contribution.

(2) The amount of the operator incentive contribution shall be proportionate to the annual support defined in the budget decree of the operator local government for the year preceding the current year.

(3) Theatres shall be entitled to support established as operator incentive contribution according to the operator's decision if several theatres of the same operator satisfy the required conditions.

(4) The arts incentive contribution of the individual theatres defined in the Budget Act shall be calculated in proportion to the number of the paying viewers in the second year preceding the current year, taking also into account the audience capacity of the theatres where the performance is played. With regard to opera, classic operetta, ballet, dance, children and youth, studio and puppet theatre performances the number of paying viewers shall be weighted as defined in the Budget Act.

(5) If the orchestra or the choir is replaced with a sound recording during a theatre or opera or classic operetta life performance, then the calculation method defined in the second sentence of Paragraph (4) shall not be applied to the specific performance. The performance of any musical theatrical work is eligible for arts incentive contribution only if the music is provided by a live orchestra (choir).

(6) The Budget Act defines the amount of operator incentive contribution and arts incentive contribution for each local government that operates and supports theatres and puppet theatres, and the arts incentive contribution is defined also for individual theatres.

Article 17

A ballet or dance group classified into the 3rd category and a theatre classified into the 4th category shall be entitled to support, proportionate to the operator support in the year preceding the current year, under the title of central budgetary support, the amount of which shall be defined in the Budget Act.

Article 18

(1) Theatres classified into the 5th and 6th categories shall be supported on the basis of tenders. The Minister shall call on a professional advisory board to assist him in making a decision on the tenders, taking into account the proposal of the PAC. Based on the recommendation of the professional advisory board, the PAC shall make a proposal for the decision. The Minister shall justify any decision that does not coincide with the proposal.

(2) Based on the proposal of the professional advisory board, the Minister may undertake a commitment for no more than three years with regard to the support allocation of the next years, up to 50% of the support allocation for the current year of theatres classified into the 5th and 6th categories.

Article 19

If the operator of any performing arts organisation classified into the 1st-4th categories reduced his operator support appropriation for the year preceding the current year, then the operator incentive contribution of performing arts organisations classified into the 1st-2nd categories and the central budgetary support of performing arts organisations classified into the 3rd-4th categories shall also be reduced proportionately in the current year. The operator shall inform the performing arts public administrative agency within 15 days from its decision on reduction.

Title 3

Conditions of Use of the Central Budgetary Support for Classified Orchestras and Choirs

Article 20

(1) An operator of a 1st category orchestra and choir shall be entitled to central budgetary support based on the number of the members of the orchestra and the choir, the operator support, the number of concerts and sound recordings, the number of paying viewers, the number of youth concerts and the number of performed contemporary Hungarian musical works, as defined in the Budget Act separately for orchestras and choirs with respect to such criteria. The Minister shall define the detailed rules of distribution and disbursement of the support in a decree.

(2) For chamber orchestras, chamber symphonic orchestras, symphonic orchestras and choirs the number of the members of an orchestra and choir referred to in Paragraph (1) shall be calculated on the basis of the average number of the musicians and singers acting in the performances of the orchestra or choir in two years before the current year, or for newly established performing arts organisations on the basis of the average number of the members in the year preceding the current year.

(3) 2nd category orchestras and choirs shall be supported on the basis of tenders. The Minister shall call on a professional advisory board to assist him in making a decision on the tenders, taking into account the proposal of the PAC. Based on the recommendation of the professional advisory board, the PAC shall make a proposal for the decision. The Minister shall justify any decision that does not coincide with the proposal.

(4) Based on the proposal of the professional advisory board the Minister shall undertake a commitment for no more than three years with respect to the support allocation of the next years, up to 50% of the support allocation for the current year of 2nd category orchestras and choirs.

(5) If the operator of any 1st category performing arts organisation reduced the agreed operator support during the budget year, then the central budgetary support shall also be reduced proportionately.

Title 4

Priority Support Provided from the Budget Chapter Supervised by the Minister

Article 21

- (1) The Minister shall issue a call for tenders primarily:
- a) for supporting children and youth performances,
 - b) for supporting theatrical educational programmes,
 - c) for supporting the premiere performances of new theatrical works and musical performances in the Hungarian language or in any minority language in Hungary, as well as contemporary Hungarian dramas and contemporary dramas in Hungary,
 - d) for supporting performing arts organisations that showed an outstanding artistic performance in the season before the current year,
 - e) for the nation-wide distribution of outstanding quality performances,
 - f) for supporting cross-border Hungarian performing arts organisations,
 - g) for participation in important international theatrical, dance and music festivals and guest productions,
 - h) for supporting professional documentation and research activities.

(2) The Minister shall call on a professional advisory board to assist him in making a decision on the calls for tenders to be issued on the basis of Paragraph (1), taking into account the proposal of the PAC. Based on the recommendation of the professional advisory board, the PAC shall make a proposal for the decision. The Minister shall justify any decision that does not coincide with the proposal.

(3) The ratio of priority support shall be at least 3% of the central budgetary support allocation of 1st-6th category theatres, ballet and dance groups, and 1st and 2nd category orchestras and choirs.

Title 5

Report on the Use of Central Budgetary Support

Article 22

The local government shall report on the ordinary use of the support within the framework and in line with the procedures of the clearance of accounts by 31 December of the current year. Any remaining support balance, committed for a task on 31 December of the current year, shall be accounted for by 30 June of the subsequent year.

Article 23

(1) Apart from the tasks covered by Article 22, an operator of the supported performing arts organisation (for each organisation if he operates several performing arts organisations) or, if there is no such party, then the representative of the performing arts organisation, shall prepare an annual professional and financial report on the use of the central budgetary support for the performing arts public administrative agency by 30 June of the subsequent year.

(2) Performing arts organisations operated by the state in compliance with Article 4 c) or with a public service agreement as defined under Article 4 d) shall send the report submitted to their operators also to the performing arts public administrative agency.

(3) Failure to submit the report shall lead to the suspension of any support in progress until the report is provided.

(4) With the exception of personal data, the contents of the report shall be data disclosed for public interest.

(5) The performing arts public administrative agency shall summarise the reports and submit them to the Minister and the members of the PAC.

(6) The Minister shall define in a decree the requirements for the format and the content of the report and the detailed rules for its submission and acceptance.

Title 6

Central Budgetary Funds of the Support System

Article 24

(1) The Budget Act shall define the support allocations to be distributed among 1st-6st category theatres, ballet and dance groups and 1st and 2nd category orchestras and choirs.

(2) In order to promote the innovative attempts of performing arts and improve the competitiveness of the private sector, the ratio of support of 6th category theatres, distributed on the basis of tenders, shall be at least 10% of the central budgetary support allocation of 1st-6th category theatres, ballet and dance groups.

(3) In the framework of budgeting, the classification based on the data supplied by 31 March of the year preceding the current year shall be used.

(4) The following shall be provided from the chapter containing support of local governments funded by the central budget:

a) the central budgetary support allocation of operators of 1st-5th category theatres, ballet and dance groups or, if there is no local government as operator, then the local government entering into a public service agreement, and

b) the central budgetary support allocation of operators of 1st category orchestras and choirs or, if there is no local government as operator, then the local government entering into a public agreement.

(5) The following shall be provided from the budget chapter managed by the ministry headed by the minister responsible for culture (hereinafter 'Ministry'):

a) the central budgetary support of registered theatres, ballet and dance groups, orchestras and choirs operated by the state,

b) the support of performing arts organisations with an agreement defined under Article 4 d) of this Act,

c) the support appropriation of 6th category theatres,

d) the support appropriation of 2nd category orchestras and choirs,

e) the application-based support appropriation defined under Article 21 of this Act, and

f) the appropriation required for the operation of the performing arts public administrative agency.

CHAPTER V

SPECIAL RULES PERTAINING TO PERFORMING ARTS ACTIVITIES

Title 1

Special Labour Law Rules Related to Employees

Article 25

(1) Depending on the employer, the provisions of Act XXII of 1992 on the Labour Code (hereinafter 'Labour Code') and Act XXXIII of 1992 on the Legal Status of Public Employees (hereinafter 'Public Employment Act') shall be applied in performing arts organisations, subject to the differences defined in this Chapter.

(2) Artist and artistic jobs shall be defined in a separate legal regulation.

Article 26

The employer shall apply the provisions of a separate legal regulation on professional qualifications, nonetheless, with regard to artist jobs, in exceptional cases he may grant exemption

- a) for a definite period, to persons capable of outstanding artistic performance in a specific job,
- b) permanently, to those who have been granted the recognition defined under Article 73 (2) of the Public Employment Act based on their artistic performance.

Article 27

Unless there is a different agreement, employment and public employment (hereinafter together 'employment relationship') shall be established for an indefinite period.

Article 28

(1) The duration of an employment relationship established for a definite term, including also the term of a definite-term employment relationship established within six months from the termination of an extended or a previous definite-term employment contract or appointment (hereinafter together 'employment contract'), shall not be longer than five years.

(2) In addition to the provisions of Article 21 (2) of the Public Employment Act, a definite-term public employment relationship may also be established for artist and artistic jobs.

Article 29

(1) Unless the parties agree otherwise, any definite-term employment relationship established for an artist and artistic job shall last until the end of the season.

(2) With regard to a definite-term employment relationship for artist and artistic jobs, the employer shall notify the employee of his affirmative or negative statement on the prolongation of employment in writing by no later than 1 March of the year in which the definite term expires.

(3) If the employer fails to make the statement defined under Paragraph (2), then he shall continue the employment of the employee upon the latter's request at least under the same terms and conditions as contained in the expiring contract.

(4) The employer shall provide a detailed proposal for the prolongation of the contract by no later than 31 March, in response to which the employee shall issue a written statement by 30 April.

Article 30

(1) The employer may terminate an indefinite term employment relationship with conductors, choir leaders, actors, puppeteers, artistes, solo singers, solo dancers, supporting actors, and group role actors through termination with notice or by discharge (hereinafter together 'termination') also when he is unable to give any artistic assignments to said employee in the following season to an extent representing at least 40% of the number of performances defined in the employment contract or, if no such arrangement has been made in the employment contract, under Article 31 (3), due to any reason associated with the changed artistic concept of the performing arts organisation.

(2) The employer may terminate the employment in compliance with Paragraph (1) only in especially justified cases, if the employee has been employed for at least 30 years.

(3) In the case defined in Paragraph (1) the employer shall notify the employee of his decision on termination or any part-time employment opportunity in advance by no later than 1 March.

(4) If the employer terminates the indefinite-term employment relationship based on Paragraph (1), then the employee shall be entitled to further severance pay, in addition to those defined under Article 95 (4) of the Labour Code or Article 37 (6) of the Public Employment Act, which shall be, provided that the collective agreement does not contain more favourable provisions for the employee, equivalent to the employee's monthly average wage:

- a) for four months in the case of at least ten years of employment,
- b) for eight months in the case of at least fifteen years of employment,
- c) and twelve months in the case of at least twenty years of employment with the employer.

(5) If at the time of the notification defined under Paragraph (3) the employee is subject to the prohibition of termination rules defined under the Labour Code or the Public Employment Act, then termination may only be notified after the expiry of such prohibition.

(6) The employer may also terminate an indefinite-term relationship on the grounds of quality replacement under Article 89 (3) of the Labour Code, or permanent professional inadequacy under Article 30 (1) c) of the Public Employment Act.

Article 31

(1) The total working time of an employee employed in an artist and artistic job shall be calculated based on the time of work performed at the work place, the time of availability and the time required for preparation outside the work place.

(2) Employees employed in artist and artistic jobs shall stay at the workplace during rehearsals and performances, as well as of any tasks related thereof and requiring the personal participation of the employee (including in particular clothes fittings, sound or light setting, preparatory and finishing activities).

(3) The employer shall employ employees in artistic jobs in full time, if the number of performances per seasons, including also the exception defined in Paragraph (4):

- a) is at least 80 for actors and puppeteers,
- b) is at least 50 for solo dancers,
- c) is at least 50 for solo singers,
- d) is at least 100 for artistes,
- e) is at least 160 for supporting actors,
- f) is at least 160 during one season for group role actors.

(4) In the employment contract the parties may also agree on a 25% higher or lower number of performances per season than the number stated in Paragraph (3).

(5) For the purpose of calculating the time of work required at the workplace the actual length of the performance shall be considered, including the time required for the performance and the intermissions, as well as for the preparatory and finishing tasks associated with it. The dress rehearsal in front of an audience shall be considered as a performance.

(6) The duration of a stage rehearsal shall be four hours. If a stage rehearsal lasts for more than four hours, then each hour started after the fourth hour shall be calculated as one and a half hours, unless the extension is not longer than fifteen minutes. During the week of the dress rehearsal the duration of rehearsals and the dress rehearsal shall be five hours. In the case of off-stage rehearsals, however, the actual length of the rehearsal shall be used for the calculation.

(7) The time calculated for preparation outside the workplace shall be on average two working hours per working day in a season for employees engaged as full-time conductor, choir leader, actor, puppeteer, artiste, solo singer, solo dancer, supporting actor, orchestra member, choir member and dance group member. For part-time employees the working time required for preparations outside the work place shall be calculated in proportion to the part-time work defined in the employment contract. The employer may replace preparation outside the workplace if he provides opportunities for preparation to his artists at the workplace during the working hours.

Article 32

The employer may also define working time schedule within a six-month frame on the basis of the daily working hours defined under Article 117/B (1)-(3) of the Labour Code.

Article 33

With the exception of scientific, educational, proof reading, editorial and intellectual activities protected by copyright, as well as voluntary activities in the public interest, the employee shall report in advance the establishment of any further employment relationship not affecting the employee's working time to the party exercising employer's rights. The party exercising employer's rights may prohibit the establishment of an additional employment relationship if it imposes a risk on the ordinary operation of the performing arts organisation.

Article 34

Any public employee employed as a solo singer or a dance group member shall be classified every two years into the next higher wage grade defined under the Public Employment Act.

Article 35

(1) Based on the collective agreement or the employment contract, an employee working in an artistic job may receive separate remuneration for participating in a performance.

(2) Subject to an agreement, an employee not employed in an artistic job shall be entitled to a participation fee for any stage performance in front of an audience, not constituting part of his job. The amount of the participation fee shall be established in accordance with the collective agreement or if there is no such agreement, by the parties also taking into account the difficulty and nature of the task. The participation fee may vary between 5% and 50% of the remuneration-supplement base defined under the Public Employment Act.

(3) In order to ensure the ordinary operation of the performing arts organisation, the employer may order a standby service also in cases other than those defined under Article 127 (2)-(7) of the Labour Code. The standby service fee shall be at least 40% of the personal base wage or the base remuneration.

(4) The collective agreement or the employment contract may also define the fees referred to in Paragraphs (2)-(3) as a flat rate amount.

(5) For employees not working in artist or artistic jobs no more than four hundred hours of extraordinary work may be set as a requirement pursuant to the provisions of the collective agreement.

Article 36

(1) Contrary to the provisions of Article 134 (2) of the Labour Code, in allocating ordinary holidays the employer shall not be required to take into account the employee's request for 25% of his base holidays in exceptionally justified cases if it would impose a severe risk on the ordinary operation of the employer. The employer shall immediately notify the employee thereof, stating also when the holidays can be taken.

(2) Employees working in artist and artistic jobs listed in a separate legal regulation shall be entitled to five working days of additional holiday each year.

Special Rules Applicable to Employees Working as Opera, Symphonic, Chamber and Other Orchestra Members, Choir Members and Dance Group Members

Article 37

For orchestra and choir members an employment relationship shall be established subject to a successful instrumental or vocal audition, the detailed rules of which shall be defined by a legal regulation.

Article 38

(1) An orchestra member shall have no more than thirty-two services in a month and no more than three hundred and eight services in a season.

(2) Any choir and dance group member shall have no more than twenty-eight services a month and no more than two hundred and eighty-six services a season.

(3) The length of one service of an orchestra member and choir member shall be three hours, or in the case of a stage rehearsal it shall be four hours. In the case of any other rehearsal its actual length shall be taken into account.

(4) The length of one service of a dance group member shall be four hours in a stage rehearsal, or the actual length of an off-stage rehearsal.

(5) The employers shall employ an orchestra, choir or dance group member in full time if the employment contract requires the delivery of at least 80% of the number of concerts defined in Paragraph 11 (1), or of the performances defined in Paragraph 10 (2), or at least 80% of the number of services in a season.

(6) The employment contract may set the number of services 20% higher than stated in Paragraph (2) for proportionate remuneration if the choir or dance group member is employed by a theatre staging operas, classical operettas or other musical theatrical works.

(7) For the purposes of Paragraphs (1)-(2) one service shall mean one performance or one rehearsal. If a rehearsal lasts for less than two hours, then half a service shall be accounted.

(8) In the case of any work required after the service a further half service shall be accounted for each hour started.

Title 2

Special Rules for Filling the Position of Executive Officer of the Employer

Article 39

(1) In a performing arts organisation operating as a budgetary institution an employment relationship shall be established with the executive officer of the employer (hereinafter 'manager') in accordance with the provisions of the Labour Code applicable to executive officers, subject to the differences stated in this Act.

(2) A call for applications shall be issued for performing the manager's tasks.

(3) The call shall be issued by the party exercising employer's rights and it shall be published on the Ministry's website. The date of publication shall be the date of disclosure on the Ministry's website.

(4) Ensuring the continuity of professional work, the exercising employer's rights shall issue the call for applications at least six months before the expiry of the definite-term contract. The deadline for the submission of applications shall be thirty days from publication.

(5) The call for applications shall contain the terms and conditions of the managerial position, the remuneration, the starting and finishing date of employment, the date of taking up employment, the planned main appropriations of the annual budget of the performing arts organisation, and the content-related requirements defined by the operator (artistic image, method of artistic management, performance indicators of the performing arts organisation, employment, etc.). In relation to the call for applications sufficient information on the organisation, including its actual economic situation, shall be provided to the applicants, either in the application documentation or in the form of personal consultation.

(6) The party exercising employer's rights shall request a professional committee to participate in the preparation of the call for applications and the evaluation of applications. The members of this committee shall be the following:

- a) four delegates of the competent professional college of the Performing Arts Council,
- b) one delegate of the Minister,
- c) one delegate of the public employees' council of the performing arts organisation,
- d) one delegate of the representative trade union, and
- e) two delegates of the party exercising the employer's right.

(7) The professional committee shall evaluate the applications and declare as supported application that application which receives the supporting vote of the majority of the committee members present at the evaluation of applications. The professional committee may declare several applications as supported. A written report shall be prepared on the meeting of the professional committee and the result of the voting. Parts of the report concerning the evaluation of applications and the result of the voting shall also be presented to the decision-maker and disclosed in manners customary in the locality. The representatives of the professional committee shall present their proposal to the operator also at the committee meeting where the applications are evaluated. The members of the professional committee shall not receive any remuneration for their involvement, but they shall be entitled to the reimbursement of their certified expenses.

(8) Applications shall be evaluated within thirty days from the deadline for submission.

(9) The party exercising employer's rights shall decide on the position within fifteen days, taking into account the opinion of the professional committee. Unless the employer is a minority local government, the employer shall make a decision with the consent of the relevant minority local government in the case of any national or ethnic minority performing arts organisation. The decision shall be disclosed to the public together with the opinion of the professional committee.

(10) If the call for applications yields no result, then the call for applications shall be issued again within no more than thirty days from the decision on annulment.

(11) In the case of an annulled call for applications the previous manager or his deputy may be entrusted with the performance of the managerial tasks for a specific period, but no more than until the appointment of the new manager.

(12) Unless the law provides otherwise, the contents of a submitted application may only be disclosed to third parties with the applicant's consent. If an application is annulled, the application shall be returned to the applicant. If the applicant does not collect the data carrier containing his personal data submitted by him within ninety days from the deadline for the evaluation of the applications, then it shall be destroyed and his personal data shall be deleted.

Article 40

(1) Any person assigned to the position of the executive officer shall have an academic qualification in the required field and at least five years of professional experience. Any qualification certified by a diploma or degree obtained in a higher education institution corresponding with the core activity of the institution or by a lawyer or economist degree shall qualify as relevant academic qualification.

(2) If the manager does not have any university or college degree in finance and economics, or an economist degree, or a university or college degree plus a financial and accounting qualification, or a qualification awarded for a postgraduate specialist course in finance and economics, then the performing arts organisation shall employ a financial manager with an equivalent degree and professional qualification.

(3) Professional experience shall mean time served in any job representing the core activity of the organisation or directly related to it, or in the case of any other employment relationship with such tasks performed at any performing arts organisation.

(4) If so proposed by the party exercising appointment rights, the Minister may grant exemption from the requirement of obtaining the aforesaid degrees or qualifications to persons who have been awarded the Kossuth Prize, the Excellent Artist of the Republic of Hungary or the Meritorious Artist of the Republic of Hungary Prize.

(5) Unless otherwise agreed, the manager shall terminate his existing public employment until the conclusion of the employment contract if the employer does not provide unpaid holidays upon the employee's request.

Article 41

(1) The employment shall be established for no more than five years. Unless the parties agree otherwise, the employment shall start on 1 February and end on 31 January.

(2) The executive officer's position shall be filled in compliance with the provisions of the Labour Code on the conflict of interests applicable to executive officers with the proviso that in a justified case the party exercising employer's rights may grant exemption in the cases defined under Article 191 (2) a) of the Labour Code.

Article 42

The Minister may request information on the application procedure from the party exercising employer's rights.

Article 43

The rules laid down in Articles 39-42 shall be applied also to registered performing arts organisations covered by the Labour Code and operated by the state or a local government, with the proviso that under Article 39 (6) the public employment council shall mean a workers council.

CHAPTER VI

CLOSING PROVISIONS

Definitions

Article 44

For the purpose of this Act:

1. puppet theatre: a theatre staging puppet and child performances primarily for children and youth as per its core activity, possessing its own performance site,
2. ballet or dance group: a performing arts organisation staging dance productions,
3. host theatre: a theatre without company, possessing its own performance site suitable for staging performances,
4. premiere: a performance created by the performing arts organisation, which is presented to the public for the first time in that specific composition of persons (including especially the main actors, the director, the choreographer, the stage and the costume designer),
5. big band: a band performing pieces classified as, or re-instrumented for jazz, where the wind instruments (brass winds, saxophone choir) are supplemented with a rhythm section,
6. performance: public presentation of prosaic, music, dance theatrical works with personal artistic performance in the presence of an audience,
7. performing arts organisation: a theatre, ballet or dance group, symphonic orchestra, choir, chamber symphonic orchestra, chamber orchestra with an independent legal entity, the core activity of which is performing, drama, dance or music as performing arts activities,
8. choir: a performing arts organisation performing oratorical or a capella pieces, including also a chamber choir if on average at least 12 members perform on each occasion,
9. season: a time unit applied to the activities of performing arts organisations other than a calendar year, starting on 1 August and ending on 31 July, not including the time unit applied to the activities of open-air theatres,
10. operator: any natural person or legal entity or economic organisation without legal entity exercising supervisory or ownership rights over the performing arts organisation,
11. operator's subsidies: operational subsidies provided by the operator, net of the central budgetary subsidies,
12. number of paying viewers: the number of private individuals purchasing admission tickets for the performance or the concert from the performing arts organisation or an agent thereof, including also private individuals for whom a third party purchased an admission ticket and those who purchase admission tickets for the performance or concert of a performing arts organisation from a third party who acquired the right to sell the performance or concert of the performing arts organisation in exchange for payment and supplies data on the number of admission tickets sold by it to the performing arts organisation,
13. dress rehearsal: a full rehearsal prior to the premiere, performed either in, or without, the presence of an audience,
14. dress rehearsal week: one week prior to the premiere, during which dress rehearsals and other rehearsals are organised for the purpose of achieving the ideal artistic objectives of the premiere,
15. independent theatre: a theatre, ballet or dance group operating without a state or local government operator,
16. concert: public presentation of musical works with the live performance of performing artists in the presence of an audience,
17. performance site: a building, building section or open-air stage, technically suitable for the public performance of a theatrical play and complying with the conditions of the applicable legal regulation,
18. chamber symphonic orchestra: a performing arts organisation playing pieces of music which performs with at least 24 or not more than 55 people on average in each performance, including also a folklore concert orchestra,
19. chamber orchestra: a performing arts organisation playing pieces of music which performs on average with at least 12 and no more than 23 persons in each performance, including also a folklore concert orchestra and the big band,
20. classic operetta: a musical piece requiring the involvement of at least a 30-member orchestra, choir, dancers and solo singers,

21. contemporary Hungarian drama or drama created in Hungary: a piece of work written in Hungarian or in the language of a national minority by an artist who is a Hungarian citizen or declares himself Hungarian, either alive, or deceased no more than 15 years before,
22. contemporary Hungarian piece of music: a piece of music written by an artist who is a Hungarian citizen or declares himself Hungarian, either alive, or deceased no more than 30 years before,
23. public service agreement: an agreement for the supply of public services, concluded for a term of at least 3 years, which regulates the relationship between the state or the local government and the performing arts organisation providing the public service, specifying also the number of required performances or concerts, the term and place of the supply of service and the remuneration due for performance,
24. national and ethnic minority theatre: a theatre performing in a national minority language or in the Hungarian language, recognised by the declaration of the national minority self-government, the performances of which are created by the community of authors who are connected to the specific minority, and satisfy primarily the demand of this minority community for education in their native language and are related to the social and cultural background and traditions of the minority community,
25. folklore concert orchestra: an orchestra performing pieces of folk origin (gypsy music, folk-like songs) on stringed and wind instruments, supplemented with a cimbalom or any other folk instrument,
26. opera: music performance requiring the involvement of solo singers, a symphonic orchestra, or occasionally a choir, solo dancers and ballet dancers,
27. performing artist engaged in independent activities: any natural person who performs artistic activities typically contracted as an independent worker.
28. production theatre: a theatre without a permanent performance site, presenting its own performance with its own company,
29. own performance: a theatrical production for the performance of which the theatre holds the required copyright for a specific term or a number of performances stated in the exploitation contract; the performance is created with the artistic activity of the creative and performing artists contracted by the theatre and is presented to the public with the organisation and from the budget of the theatre,
30. studio performance: any performance given at a performance site holding less than 100 people,
31. open-air theatre: a theatre with a permanent performance site typically related to a natural or architectural heritage, operating during the summer season (typically from 1 May to 30 September),
32. symphonic orchestra: a performing arts organisation playing pieces of music that on average performs with at least 56 members by performance,
33. theatre: performing arts organisation performing prosaic, music, dance theatrical works, including the puppet theatre, host theatre, production theatre, independent theatre, open-air theatre, national and ethnic minority theatre,
34. theatre educational programme: a programme presented for a group of maximum 40 persons for at least 3 hours, attended by communities of children and young people participating in public education homogenous in terms of age, and in which the performance or performance details representing artistic value and the drama pedagogical work are integrated in a progressive manner while achieving pedagogical objectives, and which is adjusted to the biological and psychological characteristics of the specific age group in terms of structure and content,
35. stage rehearsal: any rehearsal organised on stage, with or without costumes, scenes, lighting, sounds, whereby the direct objective of the rehearsal is to establish and harmonise all the artistic, professional and technical conditions of the performance of the product on stage,
36. company: a group of artists continuously connected to a performing arts organisation for one or several seasons based on employment, public employment, or other independent worker's contract relationship,
37. diversified theatre: a theatre group with a permanent company, with prosaic, opera/opera and/or ballet, dance performances in its repertoire,
38. orchestra: a performing arts organisation playing pieces of music,
39. musical theatrical work: an operetta, a musical, a rock opera, a musical comedy and musical play.

Entry into Force

Article 45

- (1) With the exception defined under paragraph (2), this Act shall enter into force on 1 March 2009.
- (2) Article 48 of this Act shall enter into force on the 15th day from the approving decision of the European Commission.
- (3) The Minister shall establish the date of the decision of the European Commission in the form of an individual resolution published in the Hungarian Gazette, immediately after it has been revealed.

Transitional Provisions

Article 46

- (1) The central budgetary support provided on the basis of Chapter IV of this Act may first be claimed in 2010.

(2)The registration and classification of performing arts organisation, existing at the time of the entry into force of this Act may be requested within 90 days from the entry into force of this Act.

(3)The average of the two years preceding classification shall be used as the annual number of performances in the year of the entry into force of the Act.

(4)During the classification of performing arts organisations the provisions of Article 10 (5) b) and Article 11 (2) e) shall be applied only to new managerial assignments, made after the entry into force of the Act.

(5)The rules for filling the position of executive officer of the employer shall be applied to new managerial assignments, made after the entry into force of the Act.

(6)The five-year term defined under Article 28 (1) shall be calculated from the first definite-term contract. If the five-year term has already passed by the date of the entry into force of the Act, then the definite-term contract shall be transformed into an indefinite term contract under Article 79 (6) of the Labour Code, on 1 January 2010.

Empowerments

Article 47

(1) The Government shall be empowered to issue a decree,
a) appointing the performing arts public administrative agency,
b) defining the specific artist and artistic jobs and the detailed rules of qualifications and other conditions required for filling them.

(2)The Minister shall be empowered to issue a decree defining
a) the detailed rules of the official procedures for registration, classification and the issue of certificates,
b) the physical conditions required for the activities of the 1st and 2nd category orchestras and choirs and the lower limit of the number of paying viewers,
c) the detailed rules of trial performances,
d) the requirements of the format and contents of the report prepared in accordance with this Act, and the detailed rules for their submission and acceptance,
e) in agreement with the minister responsible for public finances, the eligible expenses defined under Article 15 (5) in line with the cultural support programme approved by the European Commission, and
f) the administrative service fee defined under Article 6 (3) in agreement with the minister responsible for tax policy.

(3)The Minister shall be empowered to issue a decree, in agreement with the minister responsible for public finances, each year, within 60 days from the promulgation of the Budget Act, defining the detailed procedural rules for the distribution and disbursement of the central budgetary support of 1st category orchestras and choirs.

Amended Legislation

Article 48

(1) Article 4 of Act LXXXI of 1996 on Corporate Tax and Dividend Tax (hereinafter 'Corporate Tax Act') shall be supplemented with the following points: 37, 38 and 39:

Article 4

[For the purpose of this Act]

'37. performing arts organisation: an organisation registered in compliance with the provisions of Act XCIX of 2008 on the support and special employment rules of performing arts organisations.

38. support certificate issued by the performing arts public administrative agency: an official document issued by the performing arts public administrative agency to the supporter of the performing arts organisation, containing the name, registered seat and tax number of the taxpayer providing the support and the support amount entitling to tax credit. The total amount of support certificates entitling to tax credit issued by the performing arts public administrative agency in relation to one performing arts organisation in one year shall not be higher than the amount representing 80% of the admission ticket revenue of the performing arts organisation in the current year.

39. admission ticket revenues of the performing arts organisation: for the purpose of this Act, the actual admission ticket and pass revenues classified under SZJ 92.31.21.0 Performing arts, and under SZJ 92.34.13.0. Puppet theatre performances, less value-added tax.'

(2) Article 8 (1) n) of the Corporate Tax Act shall be supplemented with the following subparagraph ng):

[Article 8

(1) The profit before taxation shall be increased by the following items: n) book value of any support and donation without any repayment obligation, transferred funds and assets transferred without any consideration in the tax year (with the exception of goods samples defined under the Act on value-added tax), value-added tax not paid by the transferee and the amount of any obligation assumed by the taxpayer, charged to the taxpayer's profit before taxation, the

historic cost of any service rendered without consideration in the tax year, taking into account the provisions of paragraph (4), except if]

‘ng) the taxpayer gave the support for the activities of a performing arts organisation, up to the amount stated in the support certificate issued to the taxpayer by the performing arts public administrative agency.’

(3)Article 22 (1) of the Corporate Tax Act shall be replaced with the following provision:

‘Article 22

(1) The taxpayer may decide to apply a tax credit to the tax of the tax year in which he provided the support or in three subsequent tax years, up to the amount stated in the support certificate issued to him, regardless of the fact that this support does not increase the profit before taxation for the calculation of the tax base.’

Article 49

Article 3 (3) of Act CXX of 2005 on the Simplified General and Proportionate Sharing of Taxation will be supplemented as follows:

‘5311 Theatre hairdresser 5312 Theatre make-up applier 5349 Theatre dresser 7321 Theatre costume-maker 7323 Theatre hat-maker 7335 Theatre shoemaker.’

Article 50

Articles 48-49 of this Act shall be repealed one day after the entry into force.

László Sólyom m. p.
President of the Republic

Dr. Katalin Szili m. p.
Speaker of Parliament