

OPEN ACCESS

ISSN 2280-4056

*E-Journal of  
International and Comparative*

# LABOUR STUDIES

Volume 13 No. 01/2024



**ADAPT**  
www.adapt.it  
**UNIVERSITY PRESS**

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**@ 2024 ADAPT University Press**

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Online Publication of the ADAPT Series  
Registration No. 1609, 11 November 2001, Court of Modena  
*www.adaptbulletin.eu*

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# Reflections on the Evolution of the Cultural Labour Market in Light of Socioeconomic Transformations in Romania

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**Abstract:** This paper reviews the newly introduced status of professional cultural workers in Romania, as defined by recent labour regulations. It assesses the legal framework and identifies issues within these regulations, including the potential adverse effects of distinguishing between ‘professionals’ and ‘non-professionals’. The study aims to influence and improve future civic and cultural policies.

**Keywords:** *Cultural activity; Assignment of author's patrimonial rights; Labour market in Romania; Professional cultural worker; Register of professional cultural workers.*

## 1. Introduction

The creative potential of cultural workers, their active participation in the labour market, and the development of the cultural and creative sectors, alongside their increased economic contribution, were addressed in Romania last year with the adoption of the Statute of the Professional Cultural Worker. This statute establishes a coherent framework of social protection and taxation applicable to certain professional categories engaged in artistic and cultural activities.

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The concept of a worker is subject to various interpretations within the European Union<sup>1</sup>, as demonstrated by numerous studies and articles on the subject<sup>2</sup>. The primary legal source<sup>3</sup> for the definition of a worker in EU law is Chapter I (Workers), Articles 45-48 of Title IV of the Treaty on the Functioning of the European Union (TFEU)<sup>4</sup>. Typically, the notion of workers refers to salaried employees, while the self-employed enjoy the freedom of establishment and the freedom to provide services. A person retains worker status even if their salary is below the subsistence minimum established in the host Member State. In this context, Regulation (EU) No. 492/2011 of the European Parliament and Council of 5 April 2011 on the free movement of workers within the European Union is particularly relevant<sup>5</sup>.

EU institutions use various terms<sup>6</sup> to describe the concept of a worker (e.g., migrant worker, national worker, permanent worker, seasonal worker, cross-border worker, and workers who are citizens of other Member States). The concept of a worker, which is not explicitly defined by EU rules<sup>7</sup>, has been clarified through the case law of the Court of Justice of the European Union (CJEU). Generally, workers are those who engage in economic activity, receive remuneration, and maintain a work relationship under the direction of another party. From this perspective, workers include employees regardless of their type of individual

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<sup>1</sup> M. Risak and T. Dullinger, *The concept of „worker” in EU law. Status quo and potential for change*, ETUI, Bruxelles, 2018.

<sup>2</sup> E. Menegatti, *Taking EU labour law beyond the employment contract: The role played by the European Court of Justice*, in *Eur. Lab. Law Jour.*, 2020, Vol. 11(1), 26 ss.; E. Menegatti, *The Evolving Concept of “worker” in EU law*, in *It. Lab. Law e-Journal*, 2019, Vol. 12(1), 71 ss.; N. Countouris, *The Concept of ‘Worker’ in European Labour Law: Fragmentation, Autonomy and Scope*, in *Ind. Law Jour.*, 2018, vol. 47(2), 192 ss.; S. Giubboni, *Being a worker in EU law*, in *Eur. Lab. Law Jour.*, 2018, vol. 9(3), 1 ss.

<sup>3</sup> L. Ala, *Conceptul de lucrător în Uniunea Europeană (The concept of worker in the European Union)*, <https://ibn.idsi.md>, accessed on 12 May 2023.

<sup>4</sup> Published in the Official Journal of the European Union, C 326/47 of 26 October 2012.

<sup>5</sup> <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011RO492:RO:OT>, accessed on 8 May 2023.

<sup>6</sup> A.C. Popoviciu, *Lucrătorul în dreptul european (The worker in European law)*, Editura C.H. Beck, București, 2014, p. 471.

<sup>7</sup> A. Țiclea, *Directiva (UE) 2022/2041 a Parlamentului European și a Consiliului din 19 octombrie 2022 privind salariile minime adecvate în Uniunea Europeană, [Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union]*, in the Romanian Labor Law Review no.1/2023, p. 33.

employment contract, individuals in professional training or internships, and civil servants, including those with special status.

A notable CJEU judgment is found in case 337/97, *C.P.M. Meeusen v. Hoofddirectie van de Informatie Beheer Groep*, dated 8 June 1999<sup>8</sup>. The definition of a 'worker' adopted by the European Commission states: "Every citizen of a Member State has the right to work in another Member State. The term 'worker' has a specific meaning in EU law and cannot be subject to national definitions or restrictive interpretations. It refers to any person who performs real and genuine work under the direction of someone else for which they are paid. The term does not cover migrant workers from third countries."

In case C-413/13, *FNV Kunsten Informatie en Media v. Staat der Nederlanden*, it was determined that the notion of 'worker' within the meaning of Union law must be defined by objective criteria characterising the employment relationship, considering the rights and obligations of both parties involved. Consistent case law establishes that an essential characteristic of this relationship is that a person performs services for another under their direction for a period in exchange for remuneration (see Decision N., C-46/12, EU:C:2013:97, paragraph 40, and related case law, as well as the *Haralambidis Judgment*, C-270/13, EU:C:2014:2185, paragraph 28).

Those exercising liberal professions (e.g., lawyers, self-employed individuals) are generally not considered workers. However, certain EU directives explicitly equate some other individuals (e.g., job seekers, unemployed persons able to work and previously employed, those incapacitated for work due to occupational diseases, and individuals who have reached retirement age in the host state) with workers<sup>9</sup>.

The CJEU has prudently ruled that the definition of a worker must be based on the existence of an employment relationship. The essence of this relationship is that an individual (the employee) performs activities for and under the management of another person (the employer) in exchange for remuneration. The nature and duration of the work are immaterial, but the activities must be real and effective<sup>10</sup>.

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<sup>8</sup> <https://eur-lex.europa.eu, 61997CJ0337 - EN - EUR-Lex - European Union>, accessed on 12 May 2023.

<sup>9</sup> I.T. Ștefănescu, *Tratat teoretic și practic de drept al muncii*, (*Theoretical and practical treatise on labor law*), the fourth edition, revised and added, Universul Juridic Publishing House, 2017, pp. 80-81.

<sup>10</sup> C.-A. Moarcăș, *Drepturile sociale ale lucrătorilor migranți* (*Social rights of migrant workers*), Publishing House C.H. Beck, București, 2011, p. 298.



Artists and professionals involved in the cultural field have regained the attention of European and Romanian legislators, particularly due to the COVID-19 pandemic, which exposed pre-existing vulnerabilities in this industry, such as inconsistent incomes and inadequate social protection, further exacerbated by the bans imposed during that period.

The European Parliament's Resolution of 20 October 2021 on the situation of artists and cultural recovery in the EU noted that a whole generation of young artists and cultural workers would face difficulties finding jobs in the cultural sector or enrolling in higher education in the arts due to reduced opportunities. It highlighted that artists under the age of 30 are particularly at risk of unemployment, accepting unpaid work, and facing abusive working conditions, such as non-payment of wages and precarious employment contracts. The resolution urged Member States to recognise the intrinsic value of culture and its fundamental role in society, development, well-being, the economy, and inclusiveness, and to translate this recognition into sustained financial and structural support. Although efforts to adopt a European Statute of Artists have not yet materialised at the EU level, Romania introduced the Statute of the Professional Cultural Worker in April 2023. This regulation aims to mitigate the risks faced by cultural workers engaged in intermittent, heterogeneous, and unstable work, ensuring greater mobility at national and international levels, and promoting essential social dialogue in this sector through the establishment of professional associations by cultural workers<sup>11</sup>.

## 2. The Contract for Carrying out Professional Activities

The recent regulation<sup>12</sup> of professional cultural<sup>13</sup> workers includes a special type<sup>14</sup> of contract to be used alongside the contract for the assignment of patrimonial rights, namely, the contract for carrying out cultural activity<sup>15</sup>.

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<sup>11</sup> C. Roman, *Statutul lucrătorului cultural profesionist, între vechile probleme ale industriei și noile tendințe de reglementare (The status of the professional cultural worker, between old industry issues and new regulatory trends)*, [www.juridice.ro](http://www.juridice.ro), 24 august 2023.

<sup>12</sup> Emergency ordinance no. 21/2023 regarding the Status of the professional cultural worker, published in the Monitorul Oficial Gazette of Romania, Part I, no. 297 of April 7, 2023.

<sup>13</sup> The author or performing artist, as they are defined in Law no. 8/1996, republished, with subsequent amendments and additions, and/or the natural person carrying out a supporting or auxiliary cultural activity, among those listed in the annex, who have been registered as such, for fiscal purposes, for a period of three years.

<sup>14</sup> S. Voiculescu, *Care e specificul contractului de desfășurare a activității culturale? (What are the specifics of the cultural activity contract?)*, [avocatnet.ro](http://avocatnet.ro), 11 april 2023.

Article 2(k) defines the professional cultural worker as “the author or performing artist, as defined in Law No. 8/1996, republished, with subsequent amendments and additions, and/or the individual engaged in a supporting or auxiliary cultural activity, as listed in the annex, who has been registered for fiscal purposes for a period of three years.”

Because they cannot conclude employment contracts, professional cultural workers have two types of contracts available to them, depending on the case:

- The Copyright Assignment Contract: This is an agreement by which the author or copyright owner transfers all or part of their copyright rights over a work to another person, usually in exchange for a fee. According to Article 42(1) of Law No. 8/1996 regarding copyright and related rights<sup>16</sup>, this contract must specify the transferred patrimonial rights and mention, for each of them, the methods of use, the duration and scope of the assignment, as well as the remuneration for the copyright holder. The absence of any of these provisions gives the interested party the right to request the cancellation of the contract, rather than its termination<sup>17</sup>, as it would be considered invalid.

- The Contract for Carrying Out Cultural Activity: Introduced by GEO No. 21/2023, this contract is an agreement concluded for a fixed period between a beneficiary of the cultural activity and the professional cultural worker, with the objective of performing a cultural activity.

A professional cultural worker cannot be an individual who exercises a regulated or liberal profession, is a public official, or carries out cultural activities in the form of salaried work under an individual employment contract.

To acquire the status of a professional cultural worker, the applicant must have achieved, in the fiscal year prior to the registration request, at least 50% of their income, subject to income tax as defined in Title IV “Income Tax” of Law No. 227/2015 regarding the Fiscal Code<sup>18</sup>, from the following sources: revenues from the transfer of copyright or related

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<sup>15</sup> D. Țop, *Considerații cu privire la statutul lucrătorului cultural profesionist (Considerations regarding the status of the professional cultural worker)*, in the Romanian Labor Law Review no. 4/2023, pp. 33-64.

<sup>16</sup> Republished in the Official Monitor of Romania, Part I, no. 489 of June 14, 2018.

<sup>17</sup> V. Roș, *Dreptul proprietății intelectuale (The right of intellectual property)*, Vol. I. *Copyright, related rights and sui-generis rights*, C.H. Beck Publishing House, 2016, p. 406.

<sup>18</sup> Published in the Official Monitor of Romania, Part I, no. 358 of December 31, 2015, with amendments and subsequent additions.

rights; independent activities in the categories listed in the annex<sup>19</sup>; and individual fixed-term employment contracts for cultural activities that expired by the date of submission of the registration application.

Making enrolment conditional on previous income from cultural activities means that those at the beginning of their careers cannot acquire the status of a professional cultural worker. Additionally, this status is contingent upon registration as a professional cultural worker, in accordance with Article 4. To register, applicants must submit an application at any time during the year to the register of professional cultural workers<sup>20</sup>, along with fiscal documents proving that at least 50% of their income is derived from cultural activities. If applicable, they must also provide a self-declaration confirming compliance with the conditions of Article 3(2) and an affidavit attesting to the accuracy and authenticity of the information submitted.

### 3. National register of professional cultural workers

As a general observation, artists, authors, and other beneficiaries of this normative act have the option<sup>21</sup>, but not the obligation, to register as professional cultural workers. If they choose to do so, they will benefit from the advantages offered by this special regime while also assuming the related obligations.

This register will be established (Article 73, paragraph 1) within 90 days of the entry into force of GEO No. 21/2023, through an order from the Minister of Culture, which will be published in the Official Gazette of Romania, Part I.

To register as a professional cultural worker, the applicant must have earned, according to Article 3, paragraph 1, in the fiscal year prior to the registration request, at least 50% of their income subject to income tax, as defined in Title IV "Income Tax" of Law No. 227/2015 on the Fiscal Code, cumulatively from: a) income from the assignment of copyright or

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<sup>19</sup> It is about CAENs 5811, 5814, 5911, 5912, 5913, 5914, 5920, 5913, 5914, 5920, 7410, 7430, 7021, 7490, 8230, 8552, 9001, 9002, 9003, 9004, 9101, 9102, 9103.

<sup>20</sup> The public database, administered by the Ministry of Culture, which includes the identification information of natural persons registered as professional cultural workers: the unique registration number, the date of registration as a professional cultural worker and the date of termination of this registration, the mentions regarding the suspension of the quality of professional cultural worker, including the termination of the suspension and, as the case may be, the date of legal termination.

<sup>21</sup> C. Roman, *Statutul lucrătorului cultural profesionist, între vechile probleme ale industriei și noile tendințe de reglementare (The status of the professional cultural worker, between the old problems of the industry and the new regulatory trends)*, loc. cit.

related rights; b) independent activities listed in the annex; and c) individual fixed-term employment contracts for cultural activities that have expired by the date of submission of the registration application.

Income obtained from the exploitation of copyright or related rights acquired through assignment or inheritance, or from the assignment of copyright for scientific works or computer programmes, is not included in this calculation.

Alongside the application for registration, an applicant who earned income from intellectual property rights in the previous fiscal year must submit an affidavit regarding compliance with the conditions, as outlined in Article 3, paragraph 3.

To register as a professional cultural worker, the applicant can submit an application at any time during the year (Article 4, paragraph 1) to the registry administrator, along with fiscal documents proving the achievement of the 50% income threshold from cultural activities. If applicable, the applicant must also submit a declaration of personal responsibility regarding compliance with the conditions of Article 3, paragraph 2, and an affidavit regarding the authenticity of the information provided.

Fiscal documents demonstrating the income include a certificate for the previous fiscal year issued by the National Fiscal Administration Agency, the last single income declaration submitted in the previous fiscal year, and, if applicable, the administrative act authorising the activity—along with its CAEN code—issued by the National Trade Registry Office, and/or an income certificate issued by the employer, explicitly mentioning the position held and the employer's field of activity.

According to Article 4, paragraph 4, the application can be submitted in physical format or electronically to the registry administrator and will be approved or rejected within 30 days of submission.

The registry administrator verifies compliance with the conditions, approves the request, and communicates proof of registration to the applicant. If the conditions are not met, the request is rejected with a detailed explanation.

Approval or rejection of the application is communicated electronically within 30 days of submission. Failure to communicate within this period constitutes tacit approval of the application.

In case of rejection, the applicant can submit a prior complaint within 30 days of the communication to the registry administrator (Article 4, paragraph 7). The preliminary complaint is resolved within 30 days of its registration. If the preliminary complaint is rejected or not resolved within the stipulated period, the aggrieved party can notify the competent

administrative court under the conditions provided by Administrative Litigation Law No. 554/2004<sup>22</sup>.

Within 30 days of notification of approval or, if applicable, from the expiry of the tacit approval period, the professional cultural worker must communicate to the National Agency for Fiscal Administration from their fiscal domicile, either physically or electronically, a registration request as a professional cultural worker. This request must be accompanied by proof of registration in the register or, if applicable, the application submitted to the registry administrator along with an affidavit regarding the fulfilment of the tacit approval conditions.

Within 30 days of the application's registration, the National Fiscal Administration Agency at the applicant's fiscal domicile will issue a certificate of fiscal registration as a professional cultural worker, which will be communicated electronically within three days of issuance.

Proof of registration in the register is established, according to Article 4, paragraph 13, through: a) the ex officio issuance, via electronic means, by the registry of a unique registration number to the professional cultural worker, accompanied by their name, surname, and the date of registration, within 48 hours of the date of application approval; b) the issuance, at the request of the professional cultural worker, of a register extract, including the unique registration number, name, surname, date of birth of the professional cultural worker, date of registration, and, if applicable, the date of suspension, termination of suspension, and/or termination of the status of professional cultural worker; and c) the issuance, at the request of the professional cultural worker, of a registration certificate in the register, including the information specified in point b.

By communicating the registration request to the registry administrator, the professional cultural worker consents to the information provided in paragraph 13, letter b, being publicly accessible in the register.

If the conditions are not met, the National Agency for Fiscal Administration will communicate this finding to the registry within 30 days of issuing the administrative act of ascertainment and will proceed to deregister the individual recognised as a professional cultural worker within 15 days of the communication of the administrative act in question. The administrative act establishing non-compliance with the conditions for acquiring the status of professional cultural worker can be challenged (Article 4, paragraph 19) under the conditions provided by Law No. 554/2004. Acceptance of the appeal through a final court decision is to be

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<sup>22</sup> Published in the Official Monitor of Romania, Part I, no. 1154 of December 7, 2004, with the changes and subsequent additions.

communicated by the appellant to the registry, restoring the appellant to their previous status.

Registration as a professional cultural worker is valid, according to Article 5, paragraph 1, for three consecutive fiscal years, starting from the date of registration in the register. At the end of this three-year period, the professional cultural worker can request an extension, provided that at least 50% of their taxable income over this period, on an annual average, comes from activities carried out as a professional cultural worker.

If this condition is not met, the individual retains the right to request registration as a professional cultural worker in the following year.

The extension is valid, according to Article 5, paragraph 4, for three consecutive years and can be requested whenever this period expires. The request must be made no less than 60 days and no more than 120 days before the term expires, with the extension commencing from the date of term expiration.

The extension request must include the registration number in the register and be accompanied by income certificates for the period during which the individual was registered as a professional cultural worker, issued by the National Fiscal Administration Agency.

Registration is suspended by law, according to Article 6, paragraph 1, for reasons such as: a) maternity leave; b) leave for raising a child up to two years of age or, in the case of a disabled child, until three years of age; c) leave for caring for a sick child up to seven years old or, in the case of a disabled child, for intercurrent ailments, until 18 years of age; d) paternity leave; e) leave for temporary work incapacity; f) holding a position of public office, for the term of office; g) an individual employment contract for cultural activities on a fixed-term basis.

The professional cultural worker must notify the registry administrator and the National Tax Administration Agency of their fiscal domicile of the legal suspension within 15 days of its occurrence. The suspension will be recorded in the register starting from the date of communication registration. Failure to comply will result in termination of registration from the date the suspension cause occurred. The duration of registration will be extended accordingly with the suspension period. The cessation of the suspension cause must be communicated to the registry administrator and the National Agency for Fiscal Administration from the fiscal domicile within 15 days of its occurrence.

During the suspension, the professional cultural worker is not entitled to the rights established by collective agreements or the rights provided in this emergency ordinance (Article 6, paragraph 6).

Registration of the professional cultural worker will cease by law, according to Article 7, paragraph 1, in the following situations: a) upon concluding an individual employment contract for cultural activities for an indefinite period<sup>23</sup>; b) as a penalty<sup>24</sup> for non-compliance with obligations under Article 6, paragraph 2, and Article 10, paragraph 1. This cessation as a penalty appears unclearly regulated, as it refers to the obligation to submit contracts concluded by professional workers engaged in cultural activities to the regime established by the ordinance. Such a significant sanction should have been clearly and restrictively defined to avoid potential future criticism regarding the possible unconstitutionality of the rule due to a lack of predictability<sup>25</sup>; c) in the case of death; d) at the expiration of the three-year registration period.

Registration can be terminated upon request, with the request submitted in writing to the registry administrator and the National Agency for Fiscal Administration from the fiscal domicile, effective from the date of request registration.

The registry administrator will deregister the individual whose status as a professional cultural worker has legally ceased within 30 days of the date of request registration for termination or following the finding of one of the situations specified in letters b-d.

#### 4. The Legal Regime Applicable to Professional Cultural Workers

In carrying out their activities, professional cultural workers conclude contracts for the assignment of patrimonial rights in accordance with Law No. 8/1996 regarding copyright and related rights, and/or contracts for cultural activities.

According to Article 8, paragraph 2, the contract for the performance of cultural activities is defined as an agreement concluded for a specified duration between a beneficiary of the cultural activity and the professional cultural worker, with the object of performing a cultural activity. In the

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<sup>23</sup> The professional cultural worker has the obligation to communicate to the administrator of the register and the National Agency of Fiscal Administration from his fiscal domicile, within 15 days from the conclusion of the individual employment contract, the situation of legal termination.

<sup>24</sup> The professional cultural worker will not be able to submit a new application for registration in the next three years from the date of the finding by the National Fiscal Administration Agency of the situation of non-compliance with the obligation.

<sup>25</sup> C. Roman, *Statutul lucrătorului cultural profesionist, între vechile probleme ale industriei și noile tendințe de reglementare (The status of the professional cultural worker, between the old problems of the industry and the new regulatory trends)*, loc. cit.

case of performers, the assigned patrimonial rights are specified (Article 8, paragraph 3) as a separate object within the contract for the performance of the cultural activity.

As outlined in Article 8, paragraph 4, the contract for the performance of cultural activities must be made for activities listed in the annex, or comparable to them, or under the conditions specified in Article 8, paragraph 2. The contracts concluded by professional cultural workers must, according to Article 8, paragraph 5, include, under penalty of nullity, the date of registration of the professional cultural worker in the register and the unique registration number. The contract for the development of cultural activities must also include (Article 8, paragraph 6), under penalty of nullity, the conditions for ensuring health and safety at work during the performance of the activity.

It has been noted that “from a legal perspective, we are witnessing the introduction of a new category of contracts, namely cultural activity contracts. In the legislator's view, these represent agreements concluded for specific periods with the object of carrying out cultural activities. It remains to be seen how the provisions of the ordinance will be interpreted in practice concerning the ability of the professional cultural worker to conclude copyright assignment contracts and contracts for the performance of cultural activities.”

Income obtained from cultural activity contracts concluded after the individual's registration in the register constitutes income from independent activities. This provision aims to eliminate the risk<sup>26</sup> of reclassification as dependent activities, which had posed legal and fiscal challenges. Alongside this advantage, the obligation of artists to submit unique declarations and pay the relevant contributions, as per the terms, conditions, and exemptions set out in the legislation regarding social insurance and possibly health insurance contributions, is also clarified.

The registration of the taxpayer, a natural person, in the register is considered (Article 8, paragraph 8) a criterion for the independence of the activity concerning income classification. For the income earned, professional cultural workers are liable for tax and mandatory social contributions, as specified for incomes from independent activities or intellectual property rights as applicable. The professional cultural worker is obliged to submit a single declaration and pay social contributions under the terms, conditions, and exceptions provided by the applicable fiscal legislation when they are required to pay social insurance and/or health insurance contributions. The tax owed by professional cultural

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<sup>26</sup> *Idem.*



workers for income obtained from contracts for the performance of cultural activities is withheld at source by the income payer at the time of payment and represents the final tax. For income obtained from contracts for the performance of cultural activities under the conditions of paragraph 4, letter a, net taxable income is calculated by applying a flat-rate deduction of 40% to the gross income.

The period during which the individual was registered as a professional cultural worker constitutes, according to Article 9, paragraph 1, seniority in work and in the profession. Contracts concluded by professional cultural workers with beneficiaries who have the capacity of contracting authority under Law No. 98/2016 on public procurement are eligible, provided that their assignment complies with the legal provisions in the field of public procurement. A professional cultural worker who concludes a contract with a performance or concert institution and does not reside in the locality where the institution operates can receive, from the institution's budget, according to Article 9, paragraph 3, a fixed monthly non-taxable amount, up to 50% of the average net salary in the economy, to cover accommodation expenses for the entire duration of the contract.

Contracts for carrying out cultural activities, concluded according to Emergency Ordinance No. 21/2023, are considered eligible expenditure under the legislation on non-reimbursable financing of national projects and programmes. All contracts concluded by a professional cultural worker in the course of a cultural activity are subject to the provisions of Article 10, paragraph 1, and the regulations provided by Emergency Ordinance No. 21/2023. Any violation of these obligations is recorded by the fiscal authorities and can be reported to them by any person. The legal termination of the status of professional cultural worker, under the conditions of Article 7, paragraph 1, letters a and b, triggers (Article 10, paragraph 2) the recalculation of the fiscal obligations of the individual, as the provisions of Article 8, paragraph 12, will no longer apply for the period between the date on which the legal termination occurred and the date of the finding of this termination.

Income payers of professional cultural workers owe, according to Article 11, paragraph 1, an insurance contribution equivalent to 1% of the value of each contract concluded with a professional cultural worker. This contribution is declared and transferred under the conditions applicable to the insurance contribution for work, in accordance with the provisions of Article 2206 of Law No. 227/2015. Concerns have been raised that

companies contracting cultural projects<sup>27</sup> may budget this contribution as an additional cost, potentially reducing the net income of the cultural worker.

Income payers of professional cultural workers are obliged to submit a declaration every six months, by the 25th of the month following the semester, detailing the payment obligations of the insurance contribution and the nominal record of individuals for whom the contribution was paid. The model, content, method of submission, and management of the declaration are regulated by a joint order from the president of the National Agency for Fiscal Administration, the president of the National Health Insurance House, and the president of the National Agency for Employment, with the consultation of the National Agency for Payments and Social Inspection and approval from the Ministry of Finance, the Ministry of Labour and Social Solidarity, and the Ministry of Health. The declaration must be submitted electronically via the e-România portal. The personal data included in the declaration are processed in accordance with the conditions established by the General Data Protection Regulation and its implementing legislation.

This requirement has been criticized as a new, disincentive declaratory obligation: “In the context of an increasingly challenging administrative task due to the implementation of SAF-T, electronic invoicing, and other similar obligations, the establishment of a new declaratory obligation with the nominal indication of the beneficiaries of such revenues will further complicate the activities of the affected economic operators, generating higher costs associated with installing specialised software or hiring personnel to manage such aspects”<sup>28</sup>.

The declaration must include at least: a) identification details of the legal entity submitting the declaration; b) the fiscal identification number assigned by the fiscal authority; c) the name, surname, personal numerical code, and unique registration number in the register of professional cultural workers with whom contracts were concluded during the reporting period; and d) data concerning the revenues related to the concluded contracts.

Records of insurance contribution payment obligations are maintained based on the fiscal identification code. Professional cultural workers have, according to Article 12, the following rights: a) the right to participate and

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<sup>27</sup> C. Roman, *Statutul lucrătorului cultural profesionist, între vechile probleme ale industriei și noile tendințe de reglementare (The status of the professional cultural worker, between the old problems of the industry and the new regulatory trends)*, loc. cit.

<sup>28</sup> *Idem*.

collectively represent their interests to improve working conditions and defend their rights; b) the right to form or join a professional association; and c) the right to consultation or exchange of information.

According to Article 13, paragraph 1, professional cultural workers contributing to public health insurance systems have, as insured individuals, the following rights: a) sick leave and allowances for temporary incapacity to work due to common illnesses or accidents outside of work; b) sick leave and maternity allowances; c) sick leave and allowances for the care of a sick child; and d) sick leave and maternity risk allowances.

The basis for calculating these allowances is established under the provisions of Government Emergency Ordinance No. 158/2005 regarding holidays and social health insurance allowances, as amended and supplemented by Law No. 399/2006<sup>29</sup>. Incidents that occur during a professional cultural worker's activity, based on a contract for the performance of cultural activity, at the headquarters, branch, workplace of the beneficiary of the activity, or in the space designated by them, are communicated and investigated in accordance with Chapter VI "Communication, Investigation, Recording, and Reporting of Events" of the Occupational Health and Safety Law No. 319/2006<sup>30</sup>.

Professional cultural workers, as stated in Article 14, are entitled to unemployment allowance if they cumulatively meet the following conditions: a) have at least 12 months of contributions in the last 24 months preceding the application for unemployment allowance; b) do not earn income or, if engaged in authorised activities, achieve income lower than the value of the reference social indicator in force<sup>31</sup>; c) do not meet the conditions for retirement, according to the law; d) are registered at the employment agencies in their area of residence or domicile before the application for unemployment allowance is submitted; and e) have not signed any contracts for the assignment of patrimonial rights or for carrying out cultural activities as a professional cultural worker in the 60 days preceding the application for unemployment allowance.

Unemployment compensation is granted from the expiry of the term. Unemployment compensation is provided to individuals specified in Article 14, paragraph 1, for varying established periods, depending on the contribution period, as per Law No. 76/2002 regarding the

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<sup>29</sup> Published in the Official Monitor of Romania, Part I, no. 901 of November 6, 2006.

<sup>30</sup> Published in the Official Monitor of Romania, Part I, no. 646 of July 26, 2006.

<sup>31</sup> The value of the reference social indicator is currently 598 lei.

unemployment insurance system and employment stimulation<sup>32</sup>. The contribution period refers to the duration for which the individual was registered as a professional cultural worker and was compulsorily insured in the unemployment insurance system, or the period during which the individual voluntarily insured themselves by concluding an unemployment insurance contract and properly paying the contributions.

Professional cultural workers receiving unemployment allowances have, according to Article 14, paragraph 5, the following obligations: a) to appear monthly, based on a schedule or as requested, at the employment agency where they are registered<sup>33</sup>; b) to notify the employment agency of any changes affecting their entitlement within three days; c) to participate in employment stimulation and professional training services offered by the employment agency; d) to actively seek opportunities to resume cultural activities or secure employment; and e) to inform the employment agency of any temporary incapacity for work, providing the name of the prescribing doctor and the unit where they practice, within 24 hours of receiving medical leave. If the temporary incapacity occurs on non-working days or the 24-hour period ends on a non-working day, the individual must notify the employment agency on the first working day thereafter.

Unemployment compensation is paid monthly, with any fractions of a month calculated proportionally to the number of calendar days in that month. The payment of unemployment allowances will cease under the following circumstances: a) on the date of employment, according to the law, for an indefinite period or a fixed period exceeding 12 months; b) on

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<sup>32</sup> Published in the Official Monitor of Romania, Part I, no. 103 of February 6, 2002, with the amendments and subsequent additions.

<sup>33</sup> The obligation does not apply in the situation where the persons benefiting from unemployment allowance participate in professional training programs, organized under the law, whose financing is ensured from the assistance non-refundable financial aid received by Romania, as a member state of the European Union, through the European Regional Development Fund, the European Social Fund and the Cohesion Fund. The obligation does not apply during the period in which people participate in these professional training programs, in the conditions in which, prior to inclusion in these programs, were not included in the services for stimulating employment and professional training offered by the employment agency work and is in the period of providing these services. However, they have the obligation to present monthly, on the appointment date provided in para. 5 lit. a, the employment agency where the proof of participation is registered them to professional training programs whose financing is ensured from the non-refundable financial assistance received by Romania, as a member state of the European Union, through the European Fund regional development, the European Social Fund and the Cohesion Fund, or, as the case may be, proof of participation in their graduation exam.

the first day of the month following the month in which the individual earns monthly income from authorised activities that exceeds the value of the reference social indicator; c) on the date of concluding a contract as a professional cultural worker under the conditions of this emergency ordinance; d) if the period for retirement due to disability exceeds 12 months; e) on reaching the retirement age, from the date of requesting early retirement or partial early retirement; f) upon leaving the country for a period longer than three months; g) upon the commencement of a custodial sentence exceeding 12 months; h) in the case of the beneficiary's death; or i) upon beginning to carry out activity in elected positions or upon being appointed to executive, legislative, or judicial authority for the duration of the mandate.

The suspension of the payment of unemployment allowances and their reinstatement occurs as stipulated in Article 14, paragraph 11, under the conditions provided by Law No. 76/2002. Any amounts improperly granted from the unemployment insurance budget, as well as any other debts established against it, will be reclaimed following the appropriate provisions of Law No. 76/2002. Beneficiaries of unemployment benefits are insured within the state social insurance system and the social health insurance system under the conditions set forth by Law No. 76/2002. The status of professional cultural workers will not serve as the sole form of work for those in the cultural field, but rather as an alternative<sup>34</sup>, bringing them closer to the status of employees in terms of certain rights.

The income obtained through these contracts is classified as income from independent activities. The tax owed by professional cultural workers (LCP) for income derived from contracts for the performance of cultural activities is withheld at source by the income payer at the time of payment, thus representing the final tax. Professional cultural workers will be entitled to sick leave and associated allowances in accordance with their recently regulated status, as outlined by this ordinance, as well as to unemployment benefits. They have the right to receive sick leave allowances from the income payer (who will subsequently recover it from the state) during the period of medical incapacity (including maternity or risk leave) related to themselves or their child. However, the ordinance<sup>35</sup> does not currently specify the amount of this allowance. Income payers of professional cultural workers are obliged to contribute 1% of the value of

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<sup>34</sup> S. Voiculescu, *Care e specificul contractului de desfășurare a activității culturale? (What are the specifics of the cultural activity contract?)*, loc. cit.

<sup>35</sup> S. Voiculescu, *Lucrătorii culturali profesioniști vor avea dreptul la concedii medicale și ajutoare de șomaj (Professional cultural workers will be entitled to sick leave and allowances unemployment)*, avocatnet.ro, 17 April 2023.

each contract concluded with a professional cultural worker as an insurance contribution.

Chapter V (Articles 15-26) contains comprehensive regulations concerning “measures to support the training and qualification of professional cultural workers.” In line with this objective, the National Mobility Programme is established under Article 15, paragraph 1. This programme is funded from the state budget, through the Administration of the National Cultural Fund, which serves as the financing authority, with the annual amount determined by order of the Minister of Culture by 15 May each year. In accordance with Law No. 367/2022 on social dialogue<sup>36</sup>, which recognises the right of self-employed workers to form and join a trade union<sup>37</sup>, professional cultural workers are entitled to participate and collectively represent their interests to enhance working conditions and defend their rights. They also have the right to form or join professional associations and to consult or exchange information.

The establishment of professional associations for cultural workers is comprehensively governed in Chapter VI (Articles 27-67) of GEO No. 21/2023. Professional associations of cultural workers operate independently of public authorities, political parties, organisations for beneficiaries of activities, and any other non-governmental organisations, including collective management bodies or creative unions. According to Article 27, paragraph 3, professional associations of cultural workers are prohibited from engaging in political activities. The establishment or membership of these professional associations, as defined by Emergency Ordinance No. 21/2023, does not conflict with, nor does it restrict, as specified in Article 27, paragraph 4, the right of professional cultural workers to affiliate with other associations or creative unions that have been or will be established or to associate freely for any other purpose.

## 5. Conclusions

Although the aim of the Professional Cultural Worker Status Ordinance is commendable, addressing a pressing need to provide additional protection to workers in the cultural sector, the manner in which the status has been conceived — dividing workers into professionals and “non-professionals” — along with regulatory shortcomings, could ultimately do

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<sup>36</sup> Published in the Official Monitor of Romania, Part I, no. 1238 of December 22, 2022.

<sup>37</sup> M. N. Balabuti, E. T. Nicolau, *Câteva considerații critice cu privire la noua Lege a dialogului social* (Some critical considerations regarding the new Law a social dialogue), in the Romanian Labor Law Review no.1/2023, p. 47.

a disservice<sup>38</sup> to these workers if the Ordinance is not significantly amended by Parliament.

This normative act includes very broad regulations concerning certain aspects ancillary to the status of cultural workers, such as professional training and their association. It would be more appropriate to refer, at least in the latter case, to general law. Unfortunately, many of the effects of the Ordinance are delayed due to the absence of a register of professional cultural workers. The methodological rules and any changes introduced by the approval law<sup>39</sup> will, hopefully, bring<sup>40</sup> more clarity without further increasing the administrative burden on companies that choose to collaborate with professional cultural workers.

Of course, this legal framework, which outlines the Status of the Professional Cultural Worker, can be improved in the future to ensure it has the desired impact on society.

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<sup>38</sup> S. Voiculescu, *Câteva motive pentru care statutul lucrătorului cultural profesionist trebuie să cunoască modificări semnificative în Parlament (A few reasons why the professional cultural worker status must know significant changes in Parliament)*, avocatnet.ro, 25 April 2023.

<sup>39</sup> The form of this project already adopted by the Senate seems to bring certain changes that are in favour beneficiaries of this regulation (such as a 50% reduction in the health contribution for the first three years taxes from the registration or exemption, for the period 2023 - 2026 from the payment of tax on the earned income from the assignment of patrimonial rights and from the execution of cultural activity contracts concluded accordingly ordinance), opening the way to possible improvements and adjustments within the normative act.

<sup>40</sup> C. Roman, *Statutul lucrătorului cultural profesionist, între vechile probleme ale industriei și noile tendințe de reglementare (The status of the professional cultural worker, between the old problems of the industry and the new regulatory trends)*, loc. cit.

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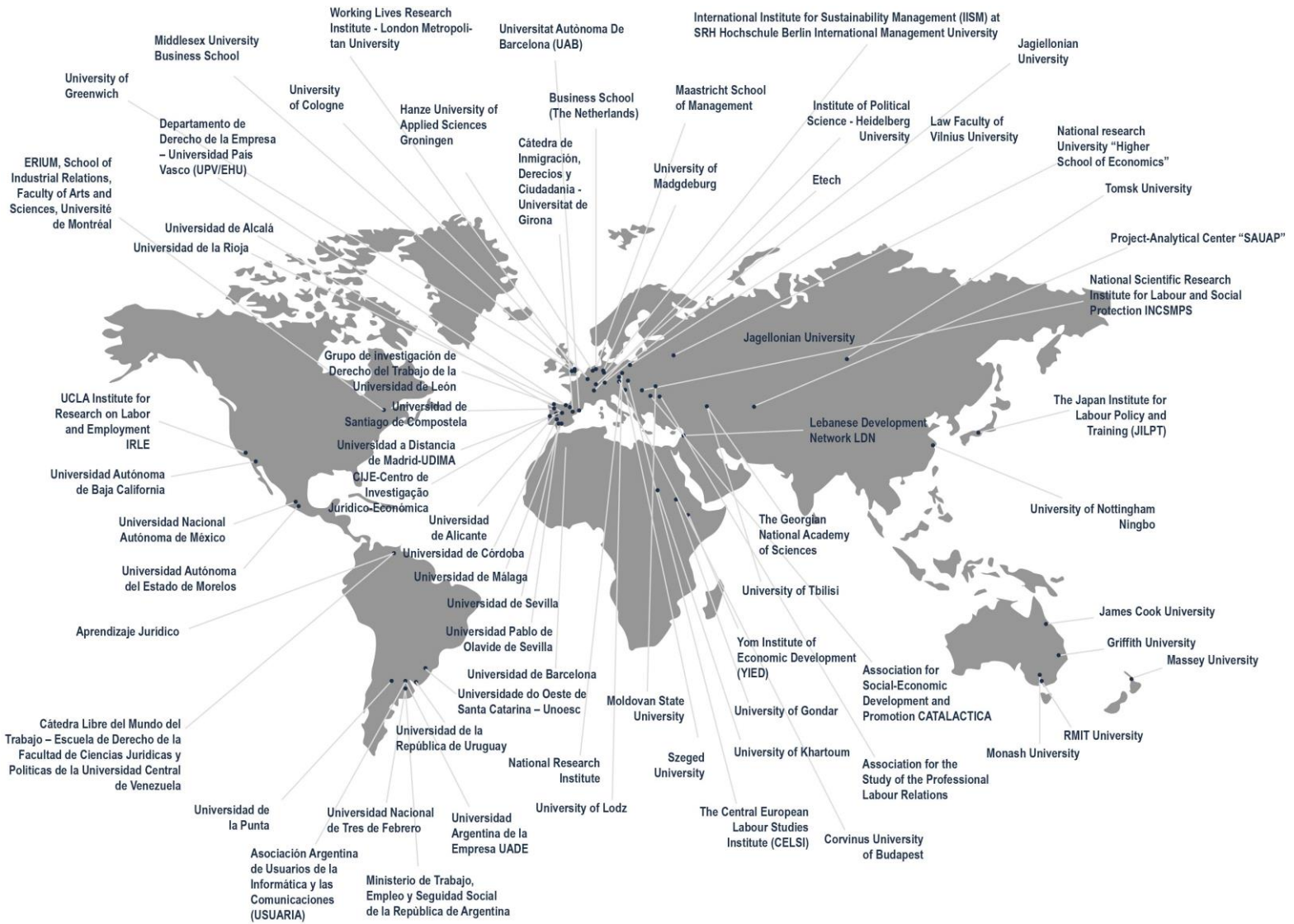
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