

PROFESSIONAL CUSTOMS: THEIR EVOLUTION AND ROLE AS SOURCES OF LAW IN ROMANIA AND THE EUROPEAN UNION

Cornelia Beatrice Gabriela DINU*

Abstract

*Professional customs are consistent and accepted practices within professions, acting as subsidiary sources of law in contexts where written rules are insufficient. This paper examines their historical evolution and contemporary role in Romania and the European Union, highlighting their contribution to the flexibility of labor law. The main purpose of the research is twofold: first, to assess the legal status of customs as sources of law and, second, to identify ways of harmonizing the Romanian system with the *acquis communautaire* in light of challenges such as digitization and the gig economy. The research methods combine a comparative analysis of legislation in this field, a study of case law, and an analysis of relevant doctrine.*

The results show that, in Romania, customs effectively fill legislative gaps in sectors such as construction and IT, but suffer from the lack of a national register, unlike the predictable EU model. The paper proposes practical recommendations: the establishment of an electronic register and explicit transposition into national legislation to promote European social dialogue. In this way, customs can become an essential tool for adapting the law to dynamic socio - economic realities.

Keywords: professional customs, sources of law, historical evolution, legal status, national register.

1. Introduction

Professional customs, known in international legal doctrine as professional practices, are consistent, repeated, and generally accepted practices within a specific profession or economic sector. They possess normative force in the absence of explicit legal regulations, distinguishing themselves from general commercial practices by their strictly sector - specific nature. They arise from the repeated interactions of professional actors - employers, employees, unions, and professional associations - who tacitly recognize them as binding rules capable of shaping behavior in complex contractual relationships. According to Article 3 of the Romanian Civil Code, customs supplement written rules whenever the latter are insufficient to establish the legal content of a situation, thus providing a dynamic and adaptable framework.

The relevance of this topic is deeply shaped by the accelerated transformations of the labor market, a field in which flexibility has become a strategic imperative for adapting to new forms of work organization, such as widespread remote work, the gig economy, and intense digitization processes¹. In Romania, the scale reached by platforms such as Bolt and Glovo has highlighted major legislative gaps, particularly in atypical employment relationships, where professional practices have spontaneously emerged to regulate aspects such as flexible work schedules or compensation for specific tasks. At the same time, at the European Union level, Directive 2019/1158² on work - life balance for parents and caregivers and repealing Council Directive 2010/18/EU places a strong emphasis on the role of national employment practices in ensuring contractual fairness, promoting a social dialogue that integrates customs as living elements of labor law. In this regard, the concept of “national practices (in force)” is mentioned ten times in the text of the Directive, beginning with Recital 25 of the Preamble and ending with the reference in Article 20 regarding the transposition of the Directive’s provisions into the legislation of Member States.

From a historical perspective, professional customs have evolved from marginal roles in centralized eras to essential tools in modern open economies. In Romania, the post-December transition marked their reintegration through the New Civil Code, Law 367/2022³, as amended, on social dialogue, reflecting a convergence with European standards. This paper analyzes the historical evolution of professional customs in Romania and the

* Associate Professor, „Nicolae Titulescu” University of Bucharest (e-mail: cdinu@univnt.ro).

¹ For more on digitization in the administrative sector, see E.E. Ștefan, “Digitalization – part of the public administration reform,” in *International Journal of Legal and Social Order*, No. 1 (2025), <https://doi.org/10.55516/ijlso.v5i1.295>, pp. 407–417.

² Directive (EU) 2019/1158 of the European Parliament and of the Council, published in OJ L 188/79 of July 12, 2019.

³ Official Gazette No. 1238 of December 22, 2022.

European Union, assesses their current status as subsidiary sources of law, and explores possible comparative perspectives for effective regulatory harmonization.

The central premise of this study is that customs effectively fill legislative gaps in dynamic sectors such as IT, construction, and logistics, thereby promoting the adaptability and resilience of labor law in the face of socioeconomic shocks. However, their full effectiveness depends on explicit recognition through consistent case law, the creation of national registers of customs, and their integration into the European regulatory framework, in order to eliminate interpretive uncertainties and prevent potential abuses.

2. Custom as a Source of Law

In the Romanian legal system, particularly in the branches of private law, sources of law are organized according to a clear and coherent hierarchy, placing the Constitution at the top, followed by organic laws, ordinances, and other normative acts having the force of law. In a subsidiary position, yet essential for filling legislative gaps, are customs and the general principles of law. Article 3 of the Romanian Civil Code explicitly establishes customs as integrative sources of legal norms, applicable whenever written provisions are absent or do not exhaustively cover the factual situation under consideration. This provision reflects a modern and dynamic conception of law, in which social and professional practice not only influences the interpretation of the law but becomes itself a component of the legal order. Through this integration, customs allow for the continuous adaptation of the legal framework to rapid socio-economic developments, avoiding the excessive rigidity of written rules and promoting a balance between legal certainty and practical flexibility.

Under European Union law, professional customs have a clearly subsidiary status, applying strictly within the limits set by the *acquis communautaire*. Article 288 of the Treaty on the Functioning of the European Union (TFEU) establishes the direct applicability and supremacy of Community law—comprising regulations, directives, and the case law of the Court of Justice of the EU—over national legislation, which limits professional practices to areas not covered by European rules or to harmoniously supplementing them. This framework ensures legal uniformity across the 27 Member States, preventing the fragmentation of the single market, while preserving vital space for local practices in sensitive sectors such as labor law or competition.

For example, customs can influence the negotiation of collective bargaining agreements, as long as they do not conflict with fundamental European principles such as equal treatment or freedom of association. This provision is also found in Directive (EU) 2019/1152. The text establishes that the scope of application includes “an employment contract or an employment relationship as defined by law, collective agreements, or practices in force in each Member State”⁴ and affirms the autonomy of the social partners, allowing for the negotiation and application of collective agreements that may differ from certain standards of the directive, provided they do not reduce the general level of protection for workers⁵ — which legitimizes the role of customs/practices in collective bargaining, as long as they do not contravene fundamental principles (e.g., equal treatment, freedom of association).

The validity of professional customs, as an indispensable prerequisite for their legal recognition, requires the fulfillment of a set of rigorous conditions designed to confer normative authority upon them and to preclude arbitrariness. Their general nature requires their tacit or express acceptance by the majority of actors in a specific professional sector, creating a broad consensus that transcends the individual or circumstantial sphere. Temporal consistency requires a practice repeated over a long period, sufficient to generate a legitimate expectation of compliance on the part of all parties involved. Publicity requires accessible and transparent dissemination - whether through codes of professional conduct, specialized publications, or online databases - so that no party can claim ignorance of them.

Finally, the requirements of morality and legality exclude any practice contrary to public order, good morals, or mandatory norms, ensuring that these practices do not undermine the fundamental values of the legal system. Together, these elements transform customs from mere contingent habits into authentic sources of law, capable of ensuring predictability, fairness, and resilience in the face of contemporary labor market challenges.

⁴ Article 1(2) of Directive (EU) 2019/1152.

⁵ Recital (38) and Article 14 of Directive (EU) 2019/1152.

3. The Historical Evolution of Professional Customs in Romania

Professional customs, as a specific form of legal custom (*cutumă*), are part of the broader body of sources of private law, alongside local or general customs, and have their own history intertwined with the evolution of Romanian society and civil law in Romania.

In feudal law, prior to the process of legislative modernization, professional customs held significant importance - the law governing guilds, fairs, and merchants relied heavily on professional custom, while written rules were few, incomplete, or adapted to local specificities. The applicable law was largely of customary origin, and professional customs served as accepted rules of conduct in commercial and artisanal circles. As noted in legal doctrine, prior to the era of modern codifications, professional customs played a foundational role in governing social relations - medieval law, whether that of guilds or markets, was essentially based on custom and local/professional practice⁶.

With the adoption of the Romanian Civil Code of 1864, inspired by the French Civil Code of 1804, custom was clearly subordinated to law through a comprehensive codification aimed at standardizing legislation across the United Principalities. The 1864 Civil Code refers to local custom, common practice, or local usage nineteen times in its text, but almost exclusively in an interpretive or supplementary capacity⁷. The role of professional customs is thus limited to situations expressly provided for by the legislature; they intervene to supplement or interpret contracts, deeds, or incomplete provisions, but may not contravene the intent of the law. Custom was recognized as a source of law only marginally, „only to the extent that it corresponds to the reality of the state and with limited applicability, in strictly defined areas.”⁸

The 19th century also saw the development of commercial law, in which professional (commercial) customs continued to play an important role, albeit subordinate to the law. In commerce, customary practice is often accepted by the parties and invoked as an applicable rule in the absence of or to supplement contractual provisions. Such professional customs (e.g., regarding bills of exchange, letters of guarantee, banking practices, etc.) were frequently used and recognized in case law, supplementing written rules.⁹

With Romania's gradual integration into the European economic circuit, international commercial customs and standardized practices have begun to be taken into account, particularly in areas such as transportation and commercial credit.

The new Romanian Civil Code (Law No. 287/2009, as republished), which entered into force on October 1, 2011, establishes in Article 1 a hierarchical model in which custom (including professional customs) is subsidiary to the law. Thus, Article 1(1)–(3) of the Civil Code provides that: „The sources of civil law are the law, customs, and the general principles of law. In cases not provided for by law, customs apply; in the absence of such customs, the legal provisions relating to similar situations apply; and when no such provisions exist, the general principles of law apply. In matters regulated by law, customs shall apply only to the extent that the law expressly refers to them.”¹⁰ Specifically, paragraph (6) provides: „Customs shall mean customary practice (custom) and professional practices.”

However, references to custom (including professional custom) are limited - there are only five explicit references throughout the entire Code. Professional customs may apply only to the extent that they do not conflict with public policy, public morals, or explicit legal provisions. The new Civil Code thus preserves the traditional concept: professional customs may supplement or interpret legal relationships¹¹, may intervene where the law is incomplete or the contract does not explicitly regulate an aspect, but they cannot repeal, replace, or modify mandatory rules of law.

As the specialized literature indicates, the mechanism by which a professional custom becomes a source of modern law requires a two - step validation: either the state explicitly sanctions it by law (incorporated into an

⁶ I.L. Georgescu, *Drept comercial român*, vol. I, CH Beck Publishing House, Bucharest, 2002, p. 125-135; St.D. Cărpănu, *Tratat de drept comercial român*, 5th Edition, Revised and Expanded, Universul Juridic Publishing House, Bucharest, 2016, pp. 25-29.

⁷ S. Angheni, *Drept comercial. Profesioniștii-comercianți*, C.H. Beck Publishing House, Bucharest, 2013, p. 41; L. V. Herovanu, *Fondul de comerț*, Universul Juridic Publishing House, Bucharest, 2011, p. 38.

⁸ S. Angheni, *Autonomia dreptului comercial în sistemul dreptului privat român*, *Analele UTM* 2020, pp. 28-31, <https://www.utm.ro/facultatea-de-drept-bucuresti/analedrept-utm-arhiva/>

⁹ B.-I. Stroe, *Dreptul comercial în lumina Codului Civil – la limita dintre tradiție și modernitate*, <https://www.juridice.ro/499295/dreptul-comercial-in-lumina-codului-civil-la-limita-dintre-traditie-si-modernitate.html>,

¹⁰ Art. 1 C.civ., republished: <https://legislatie.just.ro/Public/DetaliuDocument/304560>

¹¹ Fl.A. Baiaș, E. Chelaru, R. Constantinovici, I. Macovei (coord.), *Noul Cod civil. Comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2022, art. 1.

official norm, for example, as references in legislative acts or professional codes of ethics)¹², or the court recognizes it as an applicable norm in a dispute, at the request of one of the parties or on its own initiative, if the evidence is conclusive and the custom does not contravene written law.

Today, professional customs play a primarily interpretive and supplementary role, supplementing written sources where they are deficient or incomplete, particularly in private law.

In civil law, customs are recognized as direct sources of law, complementary to the law, ensuring the applicability of legal norms and their adaptability to concrete social realities. The specialized literature¹³ emphasizes that customs are expressly mentioned in Article 1 of the Civil Code as sources of civil law alongside the law and the general principles of law, and their application is conditional upon the existence of an established custom and compliance with public order and morality.

At the same time, Professor Gabriel Boroi highlights the role of customs in supplementing legal provisions in civil matters, particularly when the law is silent, emphasizing the need for solid evidence of their existence and content, as well as their function as interpretive norms that support the stability and legal certainty of civil relationships. This doctrine is further reinforced by current regulations that legitimize customs as adaptive instruments of civil law in the context of social and economic evolution.

In current commercial law, professional customs and practices retain an important normative role, as the Civil Code expressly recognizes them as sources of law and allows them to supplement the law in unforeseen cases, and, in the matter of contracts, to determine the content of the obligations assumed by the parties together with established practices and equity. In relations between professionals, this function is essential because it adapts the legal rule to the concrete demands of the market, ensuring continuity, predictability, and an interpretation faithful to the customs specific to the commercial environment, without exceeding the limits of public policy and good morals¹⁴.

The distinction between generally accepted customs (customary law) and those specifically validated by a court remains relevant today: only those professional customs that are no longer contested and are recognized as such by case law become sources of law, albeit of a supplementary nature.

The historical evolution of professional customs reflects the trajectory of Romanian law from normative pluralism based on local/professional customs toward a written, centralized, and codified legal system, in which custom remains a living but limited source of law, adapted to the needs of the modern economy and the current rule of law. In the context of contemporary law, professional custom survives as a supplementary instrument, never contradictory, always subsidiary and interpretive in relation to the written legal provision.

4. Trade practices under European Union law

The European legal framework for trade practices is shaped by key directives that promote transparency and fairness in labor relations, recognizing their role as complementary to written rules. Directive (EU) 2019/1158 serves as a central pillar, requiring Member States to ensure clear information on contractual terms and to incorporate accepted professional practices into their negotiation.

Directive (EU) 2019/1152¹⁵ on transparency and predictability of working conditions, which repealed Directive 91/533/EEC, provides that Member States should, in accordance with national law and practices, adopt appropriate measures to ensure the effective involvement of the social partners, and to promote and strengthen social dialogue with a view to implementing this Directive. This Directive establishes the minimum rights applicable to all workers in the Union who have an employment contract or an employment relationship as defined by law, collective agreements, or practices in force in each Member State, taking into account the case law of the Court of Justice.

The concept of „current practices/national practices” is introduced as early as Article 1(2), which defines the scope of application as follows: „This Directive establishes the minimum rights applicable to all workers in the Union who have an employment contract or an employment relationship as defined by law, collective

¹² St.D. Cărpenaru, *Tratat de drept comercial roman*, op. cit., p. 35-36; I. Adam, *Drept civil. Teoria generală a drepturilor reale*, 3rd Edition, Revised and Expanded, C.H. Beck Publishing House, Bucharest, 2013, p. 9; I. Schiau, *Drept Comercial*, Hamangiu Publishing House, Bucharest, 2009, p. 75.

¹³ G. Boroi, C.A. Anghelescu, I. Nicolae, *Fişe de drept civil*, 9th Edition, Hamangiu Publishing House, Bucharest, 2025, p. 737

¹⁴ V. Nemeş, *Drept comercial*, 6th Edition, Revised and Expanded, Hamangiu Publishing House, Bucharest, 2022, pp. 13-15

¹⁵ OJ L 186/105, 11.07.2019

agreements, or established practices in each Member State, taking into account the case law of the Court of Justice.”

The Directive uses this phrasing – „in legislation, collective agreements, or practices in force/national practices” - in multiple articles, each time to define how Member States may ensure, interpret, and adapt the rights established at the EU level:

- Art. 8(1): Establishment of the probationary period „as defined in national law or national practices”
- Art. 10(1), (3), (4): Regarding the modalities of prior notice, compensation, and implementation „in accordance with national law... or national practices”
- Art. 14: The possibility for social partners to establish derogations through collective agreements „in accordance with national law or national practices”
- Art. 21, paras. (4) - (5): Transposition of the directive—involvement of the social partners „in accordance with national law and practice”, including the possibility of entrusting them with implementation.

The term encompasses both sector - specific practices (e.g., public holidays, non - standard types of contracts, customary standards of proof) and established case law or more flexible instruments, such as informal rules, administrative guidelines with the force of settled doctrine, or social conventions implemented at the national level.

According to the provisions of the directive, the role of national practices is twofold: first, as a filter for defining the employment relationship, since the directive does not impose a uniform definition of the contract/employment relationship but refers to the criteria established in national law, collective agreements, or prevailing practices (these being, in practice, a source of secondary law that supplements the legal criteria, especially where legislation is incomplete or where professional traditions exist). Second, it serves as an instrument of adaptation and flexibility, as Member States are encouraged to ensure compliance with minimum rights, including through the use of national practices, which allows for derogations, additions, or interpretations tailored to the sector or the economic/social context.

The Directive precludes Member States from using national practice to restrict the minimum rights established at the EU level: it maintains the existing level of protection and does not allow national practice to justify the removal of rights provided by the Directive; any „existing practice” must operate in accordance with „the case law of the Court of Justice.” At the same time, national practice cannot lead to the erosion of the minimum rights established as an EU standard - which ensures a balance between regulatory autonomy and minimum convergence of standards.

Directive 2000/78/EC (General Framework for Equal Treatment in Employment and Occupation) provides, in Article 13 (Social Dialogue), that Member States must encourage dialogue between social partners „including through the monitoring of workplace practices, collective agreements, codes of conduct, and research or the exchange of experience and best practices.”

Directive 2000/43/EC (implementation of the principle of equal treatment irrespective of racial or ethnic origin) contains an equivalent provision in Article 11 (Social Dialogue), which explicitly states that Member States must promote dialogue, including through the monitoring of workplace practices, collective agreements, codes of conduct, research, or the exchange of experience and best practices.

Directive (EU) 2024/2831 on improving working conditions in platform work (recently adopted, to enter into force on December 2, 2026) directly addresses „current practices” regarding the recognition of the employment relationship, provisions on legal presumption, the determination of the correct professional status, and the implementation of the legal framework, explicitly recommending the development of „appropriate guidelines, including in the form of concrete and practical recommendations, so that digital labor platforms, platform workers, and social partners understand and implement the legal presumption, including procedures for rebutting it” (Art. 6(1)(a)). The provision explicitly requires Member States to establish a framework of support measures „including in the form of concrete and practical recommendations” - which, in practice, amounts to codes of good practice for implementation at the sectoral/national or digital platform level.

At the same time, Article 25 states that Member States must promote the right to collective bargaining (which may include the development of sectoral codes), and Article 28(2) stipulates that Member States may allow the social partners „to maintain, negotiate, conclude, and implement collective labor agreements... establishing provisions regarding work on platforms other than those mentioned” in other articles, paving the way for the introduction and recognition of sectoral codes/codes of good practice as a self - regulatory instrument.

These provisions illustrate the EU's legislative approach, whereby non-legislative instruments (codes of conduct, codes of practice, collective agreements) are identified as relevant means for implementing the directive's objectives (combating discrimination and promoting equality in the workplace) and are expressly mentioned in the cited legislative texts.

At the European level, the Court of Justice of the European Union (CJEU) plays a key role in defining the status of customs through case law that balances economic freedoms with the protection of collective practices. In the case of *International Transport Workers' Federation and Finnish Seamen's Union v. Viking Line and OÜ Viking Line Eesti*¹⁶, the Court examined the right of a Finnish trade union to organize strikes based on collective customs to protect local labor standards against an Estonian company offering lower wages, concluding that such actions are permissible if they respect proportionality and do not unduly restrict the freedom to provide services (Art. 49 TFEU). Similarly, in the *Laval* case (C-341/05, 2007), the CJEU imposed limits on Swedish collective agreements that imposed binding minimum wages on a Latvian firm, emphasizing the priority of the freedom of establishment (Art. 49 TFEU) over discriminatory national practices.

Other examples include the case of *Rüffert v. Land Niedersachsen*¹⁷, where German minimum wage practices were restricted in the context of the posting of workers (Directive 96/71/EC), and *Bogatu v. Minister for Social Protection*¹⁸, which clarified the application of practices in cross-border work without undermining equal treatment.

The influence on Member States is manifested through progressive harmonization, achieved not only through binding directives but also through recommendations or opinions. For example, the Opinion of the European Committee of the Regions - *Work on Digital Platforms - Regulatory Challenges at the Local and Regional Levels 2020/C 79/07*¹⁹ - encourages the promotion of voluntary local, regional, and cross-border codes of good practice. This approach ensures convergence in case law, with countries such as Romania transposing these rules through legislative updates, thereby avoiding fragmentation of the internal market and strengthening the role of established practices as a bridge between national autonomy and European uniformity.

Labor practices have a profound impact on competition within the European Union, acting as a balancing force between practical standardization and the risk of distortions in the internal market. They can foster a healthy competitive environment by standardizing working conditions across transnational sectors, reducing unfair advantages based on differences in social costs. Practices contribute to predictability and trust among competitors, enabling the rapid negotiation of contracts in sectors such as construction or financial services.

For example, established practices regarding payment terms in European supply chains facilitate smooth trade flows, discouraging wage dumping and encouraging long-term investment in Member States with varying labor costs. This informal harmonization complements directives such as the one on the posting of workers, promoting fair competition based on efficiency, not exploitation. At the same time, when they become restrictive, they can hinder foreign firms' access to local markets, creating tensions with the fundamental principles of economic freedom.

On the other hand, the Court of Justice of the European Union has sanctioned practices that fragment the single market. In the *Säger* case (C-76/90, 1991), German sector-specific practices regarding fees for advertising services were declared incompatible with the freedom to provide services, as they favored local providers at the expense of Dutch ones. Similarly, in the *Carpenter* case (C-60/00, 2002), British customs regarding residency requirements for cross-border workers were restricted so as not to impede economic mobility. These precedents illustrate how the CJEU applies the proportionality test, requiring states to justify customs only if they serve the general interest without less restrictive alternatives.

Through case law and soft law instruments, such as the Commission's guidelines on competition in digitized sectors, practices are shaped to support the single market. They become allies of competition when they are transparent and non-discriminatory, preventing the economic isolation of less competitive Member States such as Romania.

¹⁶ C-438/05, 2007

¹⁷ C-346/06, 2008

¹⁸ C-322/17, 2019 <https://infocuria.curia.europa.eu/tabs/document?source=document&docid=210563&doclang=en>

¹⁹ OJ C 79/36, 10.03.2020, para. 25

5. Comparative Analysis: Romania vs. the EU

Professional customs occupy a comparable subsidiary position in both legal systems, being recognized as vital mechanisms for supplementing collective bargaining agreements and written rules, which are sometimes insufficient in the face of the complexity of modern labor relations.

Under Romanian law, Article 3 of the Civil Code allows for the invocation of customs whenever statutory provisions do not fully cover the factual situation, thereby providing a degree of flexibility to legal relationships. This flexibility manifests itself concretely in collective bargaining, where customs influence essential clauses such as variable pay or flexible work schedules, allowing the regulatory system to respond dynamically to labor market developments without undermining mandatory social protection rules.

Differences in regulatory predictability are evident, as the European Union establishes uniform standards through CJEU case law and European directives on the posting of workers, which require respect for their rights in the context of cross-border service provision. In particular, Directive 96/71/EC²⁰, as amended by Directive 2018/957/EU²¹, provides a unified framework and protects the rights of posted workers, including wage rights and working conditions in the construction sector, thereby ensuring predictability within the EU.

CJEU case law emphasizes that Member States must ensure the application of these uniform standards, thereby avoiding differing or non-compliant interpretations of European rules. For example, regarding the right to work and remuneration, the CJEU has issued rulings clarifying employers' obligations toward employees posted to other Member States, emphasizing compliance with the host country's specific social and wage regulations, in accordance with the aforementioned Directive.

In contrast, national case law, as expressed in Decision No. 23/2023²² of the High Court of Cassation and Justice – Panel for the Resolution of Legal Issues –, regulates the applicability of the provisions of the Labor Code and Framework Law No. 153/2017²³, as amended, regarding the remuneration of personnel paid from public funds in cases of secondments to the public sector, but without a clear and explicit reference to European requirements and standards. This decision establishes that the public transferee employer may not pay wages exceeding the maximum level provided by law, and the employee is not required to reimburse any excess benefits granted in such situations; these provisions are strictly tied to domestic law, which may create a climate of uncertainty regarding the uniform application of European rules in practice, potentially affecting the attractiveness of cross - border investments in sectors such as construction.

Thus, deeper harmonization between national legislation and European law is essential to ensure a predictable and coherent framework for all participants in the single market, eliminating discrepancies and strengthening the legal certainty of posted workers and employers.

Another area where a comparison between national and European frameworks is needed is post-pandemic telework, which falls under distinct European and national frameworks, regulated by European directives and domestic rules that reflect the complementarity and differences between forms of remote work.

At the European level, Directive (EU) 2019/1158 was adopted to support active policies on work-life balance, including leave entitlements and flexibility in work organization. This directive is transposed into the national legislation of member states; Romania has not yet fully transposed it but has adopted partial and operational measures that reflect its fundamental principles.

With regard to telework, which is a specific form of remote work involving the use of information and communications technology, Romanian legislation is set forth in Law No. 81/2018²⁴, as amended, on the regulation of telework. This law establishes the rights and obligations of teleworkers and employers, including the conditions under which the work schedule is organized by mutual agreement and the measures for monitoring and recording working hours.

The major differences between working from home (regulated by Articles 108–110 of the Labor Code) and telework (regulated by Law No. 81/2018) lie in the use of IT technology in the case of telework and in the organization of the work schedule by mutual agreement, whereas in home-based work, the employee sets their own schedule, and the activity is monitored in accordance with the individual employment contract. The Labor

²⁰ OJ L 18, 21.1.1997

²¹ OJ L 173, 9.7.2018

²² Official Gazette No. 364 of April 28, 2023

²³ Official Gazette No. 492 of 28 iunie 2017

²⁴ Official Gazette No. 296 of 2 aprilie 2018

Code and the Telework Law protect employees against the unilateral imposition of remote work and disciplinary sanctions in the event of their refusal.

In terms of domestic case law, to date there is no established practice regarding the telework regime alone that has a significant impact on its application, similar to major decisions in other areas of atypical work. However, recent decisions by the High Court of Cassation and Justice establish interpretive frameworks for employment relationships with atypical elements, and in practice, courts have distinguished between telework and other forms of remote work, such as working from home.

In contrast, the case law of the CJEU, as illustrated by the Yodel Delivery Network Ltd. case²⁵, clarifies the concept of „worker” and the conditions under which a person providing services with a certain degree of autonomy and the ability to use subcontractors cannot be treated as an employee under Directive 2003/88/EC²⁶ on the organization of working time, thereby expanding the relevant legal understanding of flexible working arrangements in the context of remote work. However, this case does not specifically address the telework regime as such. Thus, a clear comparison between the uniform European regime partially established by directives such as 2019/1158 and the national situation reveals a state of affairs in which Romanian legislation is still in the process of adaptation, and the case law of the High Court of Cassation and Justice has not yet established a uniform set of criteria and principles applicable to telework, which may lead to inconsistent practices within organizations and legal disputes with divergent interpretations.

Another comparative example emerges in the gig economy. In the Deliveroo case²⁷, transnational practices regarding the status of riders were analyzed in light of Directive 2019/1152, with the Court imposing European criteria for classification as an independent contractor, directly applicable in Romania through platforms such as Glovo. By comparison, in Romania, local practices regarding pay per delivery are applied without harmonization, creating disparities that affect fair competition in the single market.

It is clear that Romania suffers from the absence of a national register of legal practices - unlike European databases, which list validated practices - which leads to an increase in litigation and erodes professional trust. The absence of a national register of legal practices in Romania creates a vacuum of transparency and accessibility that fragments legal practice, unlike European databases, which offer centralized and validated catalogs of professional practices.

Without such a registry, the parties involved - employers, employees, or unions - lack a single, up- to-date, and official source to verify the existence, content, or validity of a practice in a specific sector, such as construction or IT. This forces the parties to rely on subjective empirical evidence, which prolongs legal proceedings and increases the number of appeals, as courts are required to analyze the general, consistent, and public nature of the practice each time, in accordance with Article 3 of the Civil Code.

In contrast, centralized and validated European catalogs of professional practices refer to official databases and registers that provide transparency, mutual recognition, and validation of competencies, qualifications, and good professional practices used in the member states of the European Union.

One of the most important such tools is the „Europass” framework, established by Decision 2018/646²⁸. Europass is a unified European system for documenting professional skills and qualifications, which includes standardized templates for CVs, diploma supplements, and certificates, the Language Passport, and a range of tools for skills assessment and self - assessment, as well as for career guidance. This framework provides a digital platform accessible to all EU citizens, facilitating professional mobility and lifelong learning through the transparency and interoperability of information related to validated qualifications and professional practices.

Another centralized directory is the European Register of Regulated Professionals (RegProf), which is a public database of the European Commission that centralizes information on regulated professions in EU Member States and the European Economic Area, as well as administrative cooperation for the recognition of professional qualifications. This register ensures collaboration between national competent authorities and the European Commission, supporting the recognition of qualifications and facilitating the free movement of workers in regulated professions.

²⁵ C-692/19, 2020

²⁶ OJ L 299, 18.11.2003

²⁷ C-268/20, CJUE, 2022

²⁸ OJ L 112, 2.5.2018

Furthermore, European directives such as Directive 2005/36/EC²⁹ on the recognition of professional qualifications regulate the framework for access to and the practice of regulated professions, include harmonized conditions and criteria for verifying qualifications, and provide for instruments such as the European Professional Card. These ensure that professionals holding a qualification in one Member State can obtain equivalent recognition in other Member States to practice their profession under the best conditions. To ensure quality in professional training and validated practices, there are registries such as the European Quality Assurance Register for Higher Education (EQAR), which lists agencies accredited at the European level that certify compliance with European standards.

In Romania's case, the erosion of professional trust stems from this perpetual uncertainty: firms hesitate to follow established practices for fear of nullification or retroactive sanctions, foreign investors avoid sectors with a high risk of litigation, and contractual relationships become hostile, based on mutual suspicion rather than tacit consensus. In the EU, centralized registries reinforce the authority of customs as living norms, fostering economic stability; in Romania, their absence perpetuates a chaotic environment, where customs remain contested exceptions rather than reliable rules.

Globalization intensifies tensions, with transnational practices being effectively shaped within the EU through cases such as Uber³⁰, where the CJEU harmonizes ride-sharing practices, while Romania faces persistent legislative gaps and lacks mechanisms for mutual recognition among member states. These shortcomings require accelerated harmonization through the rapid transposition of directives and convergent case law, avoiding economic isolation and fully leveraging the potential of practices within an integrated European context.

6. Current Role and Prospects

Professional practices are asserting their contemporary role through their exceptional adaptability to new labor market configurations, particularly in areas such as the gig economy and widespread remote work in the digital age. In the context of the gig economy, platforms such as Bolt, Uber, or Glovo generate atypical contractual relationships, characterized by one-off tasks and variable remuneration, where emerging practices regulate essential aspects such as order distribution algorithms, peak-period bonuses, or safety protocols for delivery workers.

This practical contribution enables the smooth functioning of these ecosystems without immediate legislative intervention, transforming informal practices - born from repeated interactions between platforms and workers - into functional conventions that balance individual autonomy with operational efficiency. When analyzing their role here, these customs act as a social lubricant, preventing bottlenecks in sectors that account for a significant percentage of Romania's urban GDP, yet they raise ethical questions regarding the true fairness of these unspoken norms.

At the same time, remote work - accelerated by the pandemic and formalized by Government Emergency Ordinance No. 116/2021³¹ - is governed by practices that establish practical standards not covered by the Labor Code, such as the provision of compensation for IT equipment, protocols for non-intrusive performance monitoring, or agreements regarding digital disconnection after work hours. In sectors such as IT or financial consulting, where a large portion of the workforce operates remotely, these practices provide a framework of predictability that overcomes the rigidity of Articles 108–110 of the Labor Code, fostering talent retention and productivity. Their practical perspective highlights a proactive role: customs not only fill gaps but anticipate developments, allowing for rapid adaptation to new technologies³² such as AI in human resources management, without waiting for slow legislative transpositions.

The fundamental limitations of customs stem from their hierarchical subordination to mandatory rules, which require the exclusion of any practice contrary to public order, morality, or mandatory provisions such as the gross minimum wage, maternity protection, or the prohibition of undeclared work. This subordination, anchored in Art. 3(3) (3) of the Civil Code, guarantees the supremacy of the rule of law and protects vulnerable groups, but exposes significant risks of abuse in sectors with power asymmetries, such as logistics, where tacit

²⁹ OJ L 255, 2005

³⁰ C-434/16, 2017

³¹ Official Gazette No. 845 of 29 august 2022

³² For more on new technologies and their impact on the law, particularly with regard to the concept of liability, see E. Anghel, New dimensions of legal responsibility and liability in the era of new technologies, in *International Journal of Legal and Social Order*, No. 1 (2025), <https://doi.org/10.55516/ijlso.v5i1.279>, pp. 17-30

customs may tolerate overwork without proportional compensation, or construction, where chronic delays are „normalized” to the detriment of small subcontractors. An analysis of this limitation reveals a paradox: the flexibility of practices stimulates innovation, but the absence of prior checks can perpetuate systemic inequities, generating costly litigation and eroding social cohesion, especially in contexts of economic crisis where performance pressure amplifies abuses.

Thus, practices can evolve from a reactive role - spontaneously responding to specific needs - to a strategic one, supporting a competitive and inclusive Romanian economy by transforming them into proactive economic policy instruments, integrated into national planning and aligned with Romania’s competitiveness and social inclusion objectives.

National strategies play a catalytic role in the evolution of professional practices in Romania, transforming them from spontaneous and fragmented practices into structured components of public policy³³, aligned with objectives of economic competitiveness and social inclusion.

National strategies provide a long-term planning framework that identifies priority sectors (IT, construction, green logistics), where emerging practices can be anticipated and proactively channeled, increasing predictability³⁴ and reducing the number of disputes. For example, the National Strategy for Sustainable Development 2030³⁵ incorporates practices from green professional retraining, directing PNRR funds toward training in renewable energy, where practices such as shift rotation at wind farms become standardized norms.

Conclusions

Employment contracts have proven to be essential instruments for the dynamism of labor law in Romania and the European Union, confirming the central hypothesis of this analysis. They effectively fill legislative gaps in dynamic sectors such as IT, construction, or the on-demand economy, offering flexibility and adaptability in the face of accelerated transformations driven by digitalization, remote work, and globalization. Their historical evolution—from recognition in the pre-communist Civil Code, through marginalization during the centralized era, to modern reintegration via the New Civil Code and EU directives - highlights a subsidiary yet vital role that balances the rigidity of written rules with practical realities.

A comparative analysis reveals similarities in their legal status, but also structural gaps, such as the lack of predictability in Romania compared to the uniform European standards established by CJEU case law. Practical contributions to new forms of work demonstrate their transformative potential, although limitations - subordination to mandatory rules and the risks of abuse - require proactive interventions to prevent the erosion of professional trust.

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³³ See E.E. Ștefan, Vulnerabilities of New Technologies in the Work of Public Authorities and the Need for Cybersecurity in *Scientia Moralitas International Journal of Multidisciplinary Research*, Vol. 10, No. 1, 2025, pp. 376-381, DOI: 10.5281/zenodo.16415586

³⁴ For more on normative predictability, see also E. Anghel, Predictability and accessibility of the law, in *LESIJ - Lex ET Scientia International Journal*, Nr. 1, An XXX/2023, pp. 69-78

³⁵ <https://dezvoltaredurabila.gov.ro/strategia-nationala-pentru-dezvoltarea-durabila-a-romaniei-2030-i>

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