

From independent cultural worker to professional cultural worker

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Abstract: Emergency Ordinance No. 21/2023 of 5 April 2023 (published in the Official Gazette on 7 April) was introduced as a measure to recognise independent cultural workers as real contributors to the labour market. Part of a more complex research project that seeks to provide an overview of independent cultural workers in Romania, this article will present the results of a fiscal and socio-economic analysis of the status of professional cultural workers and the impact it will have on the independent sector in Romania. The study looks at the conditions for obtaining the status, how to obtain it, the form of organisation and the tax obligations resulting from cultural activity. At the same time, for comparative purposes, the forms of contracting currently available to independent cultural operators will be presented, with the intention of analysing the differences and similarities that a professional cultural worker (as presented in GEO 21/2023) may have in relation to the current forms of employment in the field. For the comparative analysis, the report refers to the 2024 fiscal year, which is considered to be the end of the fiscal year. Finally, the conclusions of the research will be presented, highlighting the level of applicability to the actual functioning of independent cultural workers.

Keywords: cultural worker, labor market, independent.

Introduction

According to the preamble to this ordinance, the action comes as a measure to protect and reform the cultural sector, in an attempt to diminish the disastrous effects of the COVID-19 pandemic on the sector and to align Romania with EU policies in this regard, through the National Recovery and Resilience Plan.

This preamble defines the concept of independent/professional cultural worker in legislative and fiscal terms as “the author or performing artist, as defined by Law No. 8/1996, republished, with subsequent amendments and additions, and/or the natural person carrying out a cultural support or auxiliary activity, among those listed in the annex, who have

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registered as such for tax purposes for a period of three years”¹. Therefore, this designation includes holders of copyright and related rights, but also cultural workers who until now have not been classified as an integral and recognised part of the independent cultural sector community: cultural managers, specialists in communication and cultural promotion, technicians, producers, etc. The preamble also describes independent cultural workers as having “atypical” contracts, working part-time, “earning irregular and mixed incomes”, with a tax structure consisting “mainly of micro-enterprises, organisations and small businesses”².

The ordinance comprises eight chapters, which define the status of professional cultural workers and regulate their legal, fiscal and social regime, rights and obligations, and present support measures and possible methods of association in forms similar to those of a trade union, etc. For this analysis, however, we will focus on Chapters I, II, III and IV, which deal with the fiscal and social regulations of cultural workers, and we will discuss the benefits they bring, the conditions for fulfilment and the steps that an independent cultural worker must take to become a professional cultural worker, similarities and/or differences between the tax regime that applies to them with or without the status of a worker registered as a professional, and we will conclude by comparing the two modes of operation according to the practical reality of the field.

Eligibility conditions

- To carry out independent activities in accordance with the CAEN codes attached in Annex 1 to this ordinance (in short, we are referring to CAEN codes from groups 58 - publishing activities, 59 – Motion picture, video and television programme production activities; audio recording and music publishing activities, 74 – Other professional, scientific and technical activities, 82 – Landscape activities and building services, 85 – Education, 90 – Creative and artistic activities)³

- Not have an employment contract in the cultural field at the time of registration as a professional worker

- Not hold public office

- Have had income of at least 50% from artistic or related activities in the previous fiscal year⁴ (this can be demonstrated by an income certificate issued by ANAF and includes income from fixed-term employment

¹ OUG21/2023, Chapter I, Article 2, paragraph k.

² OUG 21/2023, preamble.

³ Classification of activities in the national economy - CAEN Rev. 2 of 20 April 2007, published in the Official Gazette, Part I No. 293 of 3 May 2007.

⁴ OUG21/2023, Chapter II, Article 3, paragraph 1.

contracts, income from PFA, copyright and related rights, and income from services – all in the cultural field⁵)

Procedure for obtaining the status of self-employed professional:

- Registration in the register of professional cultural workers;
- Once every three years, an application is submitted to the Ministry of Culture, which is the administrator of the register, accompanied by supporting documents:

Tax documents proving income from copyright contracts or services exceeding the threshold of 50% of total income (these may also come from fixed-term employment contracts, although they are not accepted for continuation during the period when professional cultural worker status is held, and the employer must have one of the CAEN codes from the list accepted in the ordinance): income certificate or single declaration from the previous year, certificate from the employer, etc.

Affidavit regarding the information declared in the registration application

- The “registry administrator” as mentioned in the document is required to approve or reject the application within 30 days, with the possibility of appeal.

- Following the approval of the file, *the natural person – independent cultural worker* becomes a *natural person - professional cultural worker* with a unique registration number, similar to a PFA or SME, but with its own tax regime.

It is important to note that the status of professional cultural worker is valid, following registration, only for the next three years and only if no employment contract is signed for work in the field, at the end of which an application for its extension can be made, as long as the same conditions as for the first registration are met (proof of income from artistic and cultural activities accounting for at least 50% of total income). The status of professional cultural worker may also be suspended in situations such as: the appointment of the person concerned to public office, maternity leave, childcare leave, medical leave, etc., with the possibility of resumption.

Tax obligations

The only difference between the way independent cultural workers are currently contracted and the way this is presented in GEO 21/2023 is that, following contracting, a type of withholding tax is added, namely the employment insurance contribution (which covers, among other things, unemployment benefits), which is currently only present in individual employment contracts. This has a value of 1%, calculated on the gross

⁵ National Agency for Fiscal Administration.

amount, and the payment is made by the employer without affecting the cultural worker's gross income. Otherwise, the taxation procedure is the same as it is currently for any independent income, as shown in the attached table.

TABLE 1.⁶	employment contract	contract DA 2024	CV 2024 contract	DA contract ⁷ LCP	CV LCP contract
income tax	10	10% with a flat rate of 40% of the gross amount	10	10% with a flat rate of 40% of the gross amount	10% with a flat rate of 40% of the gross amount
health contributions (CASS)	10	10% of the equivalent of 6.12 or 36 gross minimum wages per country, if this ceiling is exceeded**	10% of the equivalent of 6.12 or 36 gross minimum wages per country, if this ceiling is exceeded**	10% of the equivalent of 6.12 or 36 gross minimum wages per country, if this ceiling is exceeded**	10% of the equivalent of 6, 12 or 36 gross minimum wages per country, if this ceiling is exceeded**
social security contributions (CAS)	25	0	25% of the equivalent of 12 gross minimum wages per country, if this ceiling is exceeded***	25% of the equivalent of 12 gross minimum wages per country, if this ceiling is exceeded***	25% of the equivalent of 12 gross minimum wages per country, if this ceiling is exceeded***
employment insurance contribution (CAM)*	2.25	0	0	1	1
total out of 100%	47	45	45	46	46

⁶ Please note that these calculations are made in accordance with the Tax Code for 2024 and that they may vary depending on subsequent changes.

⁷ Explanation of abbreviations: DA = copyright and related rights contract; CV = civil agreement, equivalent to a service contract for individuals; LCP = professional cultural worker

* unemployment, workplace accidents, sick leave, etc.

** for 2024, we are talking about amounts of 1,980, 3,960 or 7,920 lei.

*** for 2024, we are talking about the amount of 9,900 lei.

Social insurance

According to Chapter 4, Articles 13 and 14 of OUG 21/2023, from the moment they register with the Ministry of Culture and obtain a registration number for their activity, professional cultural workers have certain social security rights, similar to those of an employee, as outlined below⁸ :

- Sick leave for illness or occupational accidents
- Maternity/paternity leave and other leave related to maternity (maternity risk, sick child care leave, etc.)
- Unemployment benefit
- Pension

To better understand these regulations set out in OUG21/2023, it is necessary to draw a parallel between the current situation and the moment when a cultural worker has this status. More specifically, at present, anyone who earns income from self-employment is required to declare and pay social security contributions based on the income threshold reached during a fiscal year, with the exception of income from copyright, if the person in question has employee status.⁹

In this situation, the type of income is not important, whether it comes from cultural activities or not. When the ceiling of 12 minimum wages per economy in a year is exceeded, 25% of its value or 10% of the value of 6/12/24 minimum wages per economy is paid if we are talking about health insurance¹⁰. If the total income is below this ceiling, then the person in question is not obligated to pay either of the two contributions and, automatically, does not benefit from health insurance, social insurance or unemployment benefit, unless this is paid voluntarily.

From the moment of registration as a professional worker, the individual therefore has the same obligations as before (with an additional tax - the employment insurance contribution paid by the contracting legal entity) but enjoys a number of benefits that were not guaranteed or were more difficult to obtain in the initial form of activity.

Conclusions

After this detailed analysis of the most important aspects of the emergency ordinance and taking into account the reality on the ground and the context in which independent cultural workers carry out their activities, we arrive at the following conclusions:

- The legal framework does not differ greatly from the current situation. There is the advantage that the work performed by a cultural worker is recognised as seniority, that the cultural worker is no longer obliged to find

⁸ OUG 21/2023, Chapter 4, Art. 13-1 and Art. 14-1.

⁹ Law no. 227/2015 on the Fiscal Code, Title 5, Chapter II, Section 5, Art. 150, paragraph 2.

¹⁰ Details can be found in the comparative table.

contracting artifices in order to be able to carry out their activity (and here we refer to different legal forms for those working on the executive side of projects and programmes), having their own status similar to that of the liberal professions (a registration certificate, etc.). At the same time, the conditions under which they are contracted are presented without any exceptions to the provisions of the tax code, which in practice means short-term contracts of a maximum of 30-45 days.

- If we take as an example a young artist or cultural manager who does not yet have experience in the field, they will lose a year of seniority because they cannot prove their status as a cultural worker, having no way of demonstrating their activity and income in the field from the previous year.

- It is specified that professional cultural workers can be hired through copyright contracts or, in the case of those who perform auxiliary activities (provision of services), through collaboration agreements. However, the provisions of the tax code and its methodological norms¹¹ are not sufficiently clear regarding the period of validity of this type of contract, which may lead to a multitude of interpretations by the control bodies, with organisations unwilling to risk the consequences of such an interpretation (e.g. it may be reinterpreted by the Territorial Labour Inspectorate in the event of an inspection as a dependent activity and reclassified as an employment contract). This may result in very large fines and penalties for the legal entity drawing up the contract¹². Therefore, as this is not specifically regulated for this field, it raises questions about its applicability.

- This Emergency Ordinance refers to the recognition of the activity of independent cultural workers by classifying contracts as proof of seniority and work experience, but only for activities starting in 2023. For people who already have considerable seniority (some even more than 20 years) in the field, these years are not recognised as seniority. Therefore, all the experience and seniority in the field accumulated up to this year is null and void in the context of retirement.

- It is unclear to us how the granting of unemployment benefits for this type of activity could work in practice. Since the income of self-employed workers is not permanent, but depends heavily on the number of projects and the level of funding available to the organisations with which an individual collaborates, it is difficult to estimate professional opportunities. What we are trying to emphasise here is that the dynamics of a cultural worker's activity are too unpredictable and that we cannot anticipate whether they will have a stable

¹¹ Law no. 227/2015 on the Fiscal Code, Chapter III, Art. 7, paragraph 3.

¹² Field experience has shown that many accountants recommend drawing up this type of contract for very short periods (30-45 days) or not at all, leading many independent cultural workers to set up entities such as limited liability companies (SRL) or sole proprietorships (PFA).

income for at least one year¹³, which would allow them to pay this type of contribution in order to be eligible for benefits. Working mostly on short-term contracts, there are often breaks in an individual's contractual activity, even if these may only be for a month, for example.

That being said, OUG 21/2023 is a long-awaited measure for members of the sector and beyond, but, after passing it through a practical filter and applying it to a few practical examples, we can say that it only partially solves some of the basic problems faced by self-employed workers. Unfortunately, the same rules apply as for a profit-making enterprise, without taking into account the fact that the income of those in the field is not generated from a commercial economic activity, but from activities that provide a public service, and the same tax measures cannot be applied to them if the aim is to encourage them to continue their activity in the field.

Almost two years after the ordinance was promulgated, on 26 February 2025, the Methodological Norms regarding the Register of Professional Cultural Workers were published in the Official Gazette¹⁴ and are expected to be implemented (we hope) as soon as possible. Due to the lack of a national awareness campaign, many cultural workers were unaware that they could have registered as early as 2024. We hope that this will happen in the future, as the information is currently being passed on by colleagues, acquaintances and other people who are volunteering to promote this opportunity.

However, to end on a positive note, the Professional Cultural Worker Statute does offer some clear social security benefits. For the first time, an individual can receive unemployment benefits as long as they pay their contributions, can take sick leave following an illness or accident, can more easily take leave and receive child-rearing benefits, and most importantly, their work is recognised as seniority and professional experience. Even if it does not solve all the problems of the independent cultural sector, it is a big step forward and a long-awaited change in the position of artists and other workers in this sector.

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¹³ Currently, according to Law 76/2002, unemployment benefits are only granted to those who can prove that they have worked or contributed to the unemployment insurance budget.

¹⁴ [ORDER No. 2.618 of 13 February 2025](#), published in the Official Gazette of Romania, Part I, No. 172 of 26 February 2025.

Theatre Section

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