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CUSTOM – A CONSTANT IN LAW

C.B.G. ENE-DINU

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Cornelia Beatrice Gabriela ENE-DINU
"Nicolae Titulescu" University of Bucharest
E-mail: cdinu@univnt.ro
ORCID ID: https://orcid.org/0009-0001-5924-5876

Abstract
Custom, also known as tradition or customary law, has played a fundamental role in the development of law over time, being considered one of the oldest formal sources of law. Although in many modern legal systems it no longer holds the same value or importance, the study of customs remains essential for understanding the formation of positive law and the national character of a legal system. An analysis of legal folklore, i.e., the study of customs, habits, and traditions from a legal perspective, allows for both the historical evolution of legal norms and the general principles of law of a community to be outlined. Through custom, societies established accepted and respected rules of conduct over generations, thus laying the foundation for the subsequent development of written legislation. Custom preceded written laws and represented a form of social regulation based on the unanimous acceptance of certain conduct norms. In the absence of a formal legislative system, communities turned to traditions and customs to regulate social relations and ensure stability and order. Before the advent of written laws, customs and traditions were the only means by which communities were organised.

Key words: *custom, source of law, branches of law, legislation.*

INTRODUCTION

This article represents a continuation of the previous material titled "The Presence of Custom as a Legal Source from Country Law to Modern Civil Law", presented at the Conference With International Participation "Public Security and the Need for High Social Capital", Project financed by Arad County Council at the Arad County Cultural Center, 10th-11th of November 2023, within the panel "Abstract Thinking and Concrete Experience in (Post) Modern Legal Theory." In that article, I examined the weight of custom as a source of law in various

historical stages, from Country Law to modern law, with a special focus on civil law.

In this material, I propose an analysis of custom as a constant feature of law, arguing for its role and importance in the current legal system, with a detailed look at different branches of law through the comparative method. We will examine how custom retains its relevance and adaptability in branches such as international law, commercial law, constitutional law, and criminal law, in the context of modern regulations and new legal challenges. While the previous material presented the historical presence and role of custom, this article aims more at a comparative approach to highlight how custom, despite having a reduced weight compared to other formal sources of law, remains a flexible element, with distinctive suppleness in various branches of law, contributing to the completion of written legal norms and the adaptation of law to the needs of contemporary society.

For a social practice to become a custom and thus be considered a source of law, two fundamental conditions must be met: an objective condition and a subjective condition.

The first condition, also referred to in specialised literature as *usus*, concerns the existence of a continuous and uninterrupted practice. This practice must be consistently and uniformly followed by community members and applied under the same circumstances over time, without altering its content or the effects its application creates. The constant repetition of an act requires a sufficiently long period to establish uniformity and consistency in its application. However, the notion of duration is relative and varies depending on the nature of the legal relationship. For example, in certain fields, such as public international law, there are acts that, by their nature, can only occur at long intervals. For instance, in relations between states, certain rules may apply only occasionally *(Daugirdas, K. 2020, p. 229–233)*. In such situations, even if the number of repetitions is smaller, the rule may acquire legal force if it is respected every time or in most relevant cases *(Herdegen, M. 2024, p. 440-441)*. Constant repetition, even if rarely applied, must be perceived as the expression of a constant legal conviction *(Boghirnea I., Vâlcu E., 2022, p. 38-45)*, meaning a clear manifestation of the fact that the rule has the binding force of a norm.

The subjective condition, *opinio juris sive necessitatis*, involves the recognition and collective conviction that the respective practice is not merely a social custom but represents a legal obligation, thus holding the force of a legal norm. Therefore, community members must perceive this practice not merely as a tradition but as a mandatory rule that must be respected and applied in similar cases. This distinguishes custom from mere social practices by the fact that its binding nature does not depend solely on the will of the individual subject to the rule but is imposed by a common sense of obligation.

By cumulatively fulfilling these two conditions, the social rule transforms into custom, which, in turn, becomes a legal norm through its tacit and general recognition, coming to be legitimately invoked as a norm in various legal situations. This process contributes to the consolidation of informal rules, which can play an important role, particularly in traditional societies or areas where written regulations are limited or non-existent. Customary rules manifest through the constant repetition of acts accompanied by a profound sense of obligation, even if this obligation may be vague or implicit. This constant repetition represents the material element of custom, the external and visible part of an unwritten rule. However, the mere repetition of certain acts or behaviours is not sufficient to define a legal custom.

Many actions are repeated constantly in society, yet they do not acquire the status of a legal norm. For example, personal conduct rules, such as those related to politeness or caution, are followed by most individuals without the belief that someone else might impose compliance with these norms. These rules may be observed out of personal conviction that they represent appropriate behaviour or a moral duty, but they do not acquire the force of a legal norm. The key element distinguishing mere habit from a customary rule is the sense of legal obligation perceived by the community. Rules of politeness or caution do not have this legally binding component, as, even if followed out of personal initiative, there is no belief that their violation could result in legal sanctions or consequences. On the other hand, a customary rule is based on the tacit acceptance that its violation could be sanctioned within the community, even if it is not regulated by a written law.

Legal custom differs essentially from simple traditions without legal significance by the fact that, when recognised as a source of law, it is applied by authorities and courts, with the support of the state *(Popa, N. 2020, p. 174-175).* Although custom is not directly created by the legislator, its recognition as a legal norm is based on the tacit approval of the legislator, thus conferring it the legal force equivalent to an unwritten law. Legal custom is, in essence, a tacitly agreed law, as its consistent and uncontested application by society members eventually becomes accepted and supported by the state *(Boghirnea, I., 2008, pp. 23-31).* In this process, the state's authority plays a decisive role in validating and consolidating the customary norm. This validation is achieved through the courts sanctioning cases of non-compliance with the custom. In this way, legal custom becomes a legitimate source of law, equivalent in legal terms to formal legislation.

The formation of a custom is the result of a process of collective persuasion *(Popa, N., Anghel, E., Ene-Dinu C., Spătaru-Negură, L., 2023, p. 152)*, in which the contributions of each person merge to give rise to a common norm. Custom, in this sense, is born from the collective wisdom of a people, perceived as an anonymous and collective work of the entire community. From this perspective, custom emerges from the lived experience of a people that has

thought it, evaluated it, and desired it, and through the correctness and unmistakable way in which it resolves social conflicts, the customary norm has imprinted itself in the minds and hearts of all members of society. Implicitly, every custom has the spirit of the creator people imprinted in its normative content—*Volksgeist* *(Popa, N. 2020, p. 175)*. For the Romanian people, if we could map its customary system, we would have to use the symbols sewn onto the traditional costumes of each region of Romania. From this perspective, in administrative law, the role of custom as a source of law is reflected through the lens of local autonomy, which can lead to the formation of long-standing administrative practices imposed by geographical, demographic, and other factors *(Ştefan., E. E., 2023, p. 113)*. In this regard, Article 104, paragraph 2 directly refers to custom as a source of law for the status of the administrative-territorial unit: "The status of the administrative-territorial unit must include local identity elements of a cultural, historical, customary, and/or traditional nature, based on which programs, projects, or activities, as applicable, can be developed, and their financing provided from the local budget."

Although this general societal will, which gives rise to custom, may be forgotten over time, it initially played an essential role in the formation of custom, being perceived as an informal legislator. A crucial moment in the formation of a customary norm occurs when a member of society fails to conform to the usual behaviour of the community, and their action is condemned by the other members. This reaction of condemnation transforms the habit from a mere collective practice into a collective will, with a subjective sense of obligation. At this point, the violation of the customary norm is socially sanctioned, and the norm becomes more than a convention; it consolidates as a binding rule.

I. THE PRESENCE OF CUSTOM IN DIFFERENT BRANCHES OF LAW

In modern law, customary law has lost much of the importance it held in previous eras, and its role has become secondary in most legal systems, with the exception of traditionalist systems. This decline in the relevance of custom is explained by its conservative nature, being a rule that presupposes the maintenance and perpetuation of the social relations from which it emerged. In a modern era characterised by rapid social transformations and the need for constant adaptation, custom can no longer adequately respond to the changes and complexities of new social relationships. Nevertheless, custom has not entirely lost its status as a source of law. In modern law, custom continues to serve as an interpretative and supplementary source of law. This means that although written norms and legislative codes are dominant, custom can be used to clarify or fill gaps in the legislation when legal norms do not regulate a particular issue. Particularly in areas where written law does not cover all practical details, custom can provide traditional solutions to be used as a reference.

Thus, modern custom retains its validity, albeit to a lesser extent, being invoked mainly to support the interpretation of the law or to offer solutions where written law is incomplete or insufficient. This reflects the adaptability of customary law to the new requirements of a modern society, in which social and economic relations evolve much more rapidly than in the past.

I.1 Labour Law

In the field of labour law, although it was initially argued in the literature that legal custom cannot constitute a source of law in labour law, as it was considered incompatible with the legal regulation of labour relations, more recently, some authors have started to argue the contrary *(Țiclea, A., Georgescu, L., 2024, p. 20)*.

This change in perspective comes in the context of the emergence of the New Civil Code, which in Article 1, paragraph 6, regulates professional practices as primary sources of law, derived from custom.

These practices represent consistent and generally accepted practices in a particular professional field and are considered a source of law to cover potential legal gaps or to clarify certain aspects in relationships between professionals. In this sense, they contribute to the flexibility and adaptability of civil norms to economic and professional realities, thus ensuring the fair application of the law according to the specificities of each field.

Professional practices, which are forms of professional customs, are based on widely accepted practices within industries or specific sectors and are commonly applied by employers when making decisions regarding staff employment. However, the use of these practices is strictly limited by imperative legal norms and collective labour agreements, which cannot be violated under the pretext of applying customs. Professional practices have been recognised as sources of civil law precisely because civil law regulates not only the relationships between natural and legal persons in general but also the relationships between professionals.

Professionals are defined as "...all those who operate a business." *(Article 3, New Civil Code)*. The New Civil Code does not offer an explicit and concise definition of a professional, leaving this term somewhat open to interpretation depending on the legal and practical context. A professional is interpreted through the lens of the economic, commercial, or service-providing activities carried out by that person. Although there is no direct definition, the Civil Code relies on the legal tradition, which understands a professional as a natural or legal person who carries out a continuous and organised activity for the purpose of obtaining profit or income. Thus, this term includes both traders and other persons who provide professional services or conduct economic activities, including those regulated by various special laws. The Implementation Law No. 71/2011, in Article 8, lists

several categories of professionals, including traders, who are renamed as professionals in Article 6 of the same law.

Even though custom does not play a primary role in labour law, there are situations where certain common professional practices may have legal relevance, provided they are objectively justified and do not violate imperative laws or the provisions of collective labour agreements. This interpretation opens a pathway through which custom can, in a limited context, be recognised as an additional element within the regulation of labour relations.

I.2 Constitutional Law

Custom plays a significant role in constitutional law, where it can contribute to the establishment of rules regarding the political organisation of a state. These rules can be of two types: customary, based on traditions and practices, and codified, recorded in an official document forming the written constitution of a state.

A customary constitution is made up of accepted practices and traditions regarding the establishment, competence, and functioning of state authorities, as well as the rules governing the relationships between these authorities and citizens. Until the 18th century, most states relied almost exclusively on customs for political organisation. Such customary constitutions were flexible but also imprecise, as it was difficult to determine the original meaning of a custom, to establish when a custom became obsolete, or to identify exactly when a new custom formed and became accepted by the community.

Nowadays, purely customary constitutions no longer exist, as all states have adopted written constitutions that are clearer and more precise in their regulations. However, customary constitutional norms continue to coexist with written constitutions, fulfilling a supplementary role. These norms are invoked when the written constitution does not provide solutions for certain situations or when there are no clear regulations in the official document.

A classic example is the British constitutional system, where a significant part of the political organisation and functioning of state institutions is based on customary norms, thus complementing what we refer to as the British constitution. Other states may also have certain customary elements in their constitutions, although their role is much more limited than in past centuries. The British Constitutional Body includes, alongside written norms (statutory law), law derived from judicial precedents (common law), and an unwritten part consisting of customs. These constitutional customs have developed over a long period of practice and represent an essential component of the British political system, complementing the written constitution and ensuring the continuity of political and administrative traditions.

The constitutional customs in the UK regulate important aspects of the functioning of state institutions and their relationships with each other, as well as

the relationships between the state and its citizens. These unwritten norms, respected with the same authority as written ones, reflect the nature of a political system based on tradition and stability, where changes are rare and gradual, allowing for the formation and consolidation of long-term customary norms.

In modern constitutional law, although a purely customary constitution no longer exists, customary norms continue to play an important role as supplementary rules, ensuring the coherent functioning of the state in the absence of explicit regulations in the written constitution. This coexistence allows for the flexible adaptation of the political system to new circumstances, while also maintaining the continuity of the state's constitutional traditions.

A classic example of a constitutional custom in the history of Romanian law was the rule during the period of the 1866 Constitution, according to which the head of state had to appoint the government from the political party with the best standing after elections *(Ene-Dinu, C., 2023, p. 252-253)*. This constitutional custom gradually became established, becoming common practice between 1869 and 1891. Over this period, the practice consolidated and was recognised as an unwritten but obligatory norm, reflecting the will of the electorate and respect for the parliamentary majority.

This evolution illustrates how a custom can become a constitutional practice through repeated application and general acceptance, even if it is not formally codified in a written constitutional document. Constitutional custom has a limited role in supplementing and interpreting the written constitution. Custom can fill gaps or clarify aspects not sufficiently specified in the constitutional text, but it cannot contradict or replace written legal norms. This supplementary and interpretative role must be exercised with rigour and great caution to avoid any form of arbitrariness in the application of constitutional norms.

In essence, constitutional custom serves as a complementary mechanism, intended to support the proper functioning of the written constitution, ensuring its interpretation and application in a coherent manner and in accordance with established practices. However, under no circumstances can custom prevail over written norms, as this would create major risks for the stability and predictability of the constitutional system.

Today, it is considered that constitutional custom plays a more significant role in democratic and stable state systems, where there is a long tradition of political and legal continuity. This is because a customary rule requires time to become established, being recognised and consistently applied within the state's institutions. In contrast, in constitutional systems that have undergone frequent changes, custom has a smaller influence, as these transformations do not allow for the formation of consistent and uninterrupted long-term practices.

Therefore, constitutional custom plays a significant role in state systems with a long democratic tradition, such as the United Kingdom, while in newer or

less stable constitutional systems, where changes are more frequent, custom has a reduced influence.

In Romania's 1991 Constitution, some customary rules were included, particularly those established before the communist regime. However, it was argued that once these rules were transformed into written constitutional provisions, they lost their customary character. This opinion is not shared, as the essential difference between law and custom is not that one is written and the other unwritten, but in how they are created. Law is issued by the state through a formal legislative act, while custom is the result of consistent practice and is only recognised by the state, not created by it. Thus, the customary nature of a norm is not automatically lost by its inclusion in a written constitution. Even if these rules are formalised in the constitutional text, they retain their customary origins, being the result of historical practice and legal tradition. Their incorporation into the written constitution can be seen more as a codification of already existing and accepted rules than as the elimination of their customary character.

This point of view emphasises that, although the formalisation of custom in the form of a written constitutional provision brings it into the realm of positive law, its customary essence, derived from long-standing practice and traditional recognition, remains present. Thus, customary legal traditions can continue to influence constitutional law, even when they are codified in written texts.

According to some opinions expressed by constitutional law specialists *(Muraru, I.; Tănăsescu, E. S., 2024, p. 36)*, in addition to the customs already incorporated into the 1991 Romanian Constitution, new constitutional customs have emerged or are in the process of forming over time. These customs have arisen from the consistent practice of state authorities and institutional relationships, which, although not explicitly provided for in the constitutional text, have been tacitly accepted and have gained a binding character through repeated and consistent application.

Such constitutional customs have formed in response to practical situations not clearly regulated by the Constitution, but which, in the absence of written norms, required interpretative solutions. For example, practices such as the appointment of the prime minister or the consultation procedures between the president and Parliament in certain situations can acquire a customary character if they are consistently applied and recognised by political and institutional actors.

This evolution of constitutional customs demonstrates that the Romanian constitutional legal system is dynamic and adaptable, allowing for the formation of unwritten norms that complement and support the application of written norms. Constitutional customs thus contribute to the stability and efficient functioning of institutions, ensuring the continuity of democratic practices in situations where written law does not provide complete solutions.

In the case of the Romanian Parliament, after 1989, parliamentary customs have developed, playing a supplementary role in relation to written regulations. These customs emerged as a response to situations not explicitly regulated by parliamentary rules, being accepted by parliamentarians and consistently applied within legislative activities. For instance, practices related to the debate of laws or the relationships between the chambers of Parliament can become parliamentary customs if they are repeated and observed without opposition. Parliamentary customs are thus recognised as supplementary sources of law in the legislative process, complementing the formal framework of legislative procedures. These customs ensure flexibility and adaptability in the legislative process, enabling the efficient functioning of Parliament even in the absence of written regulations. They are essential for maintaining the coherence and continuity of parliamentary procedures in new or unforeseen situations.

Parliamentary customs clearly illustrate how legal custom can become a formal source of law, contributing to the regulation of legislative procedures and their adaptation to the specific needs and circumstances of each moment.

I.3 Criminal Law

In criminal law, the fundamental principle is that of the legality of offences and punishments, “nullum crimen, nulla poena sine lege”, which stipulates that no person can be convicted of an act that is not expressly provided by law as a crime, and no punishment can be applied unless stipulated by law, in the broad sense of the term.

Regarding the authorship of the first written codification of the principle of legality, there are two different perspectives:

The first view attributes this codification to King John of England, who established in Article 39 of the Magna Carta Libertatum (1215) that no free man could be punished without a legal trial. This document is seen as one of the earliest texts emphasising the principle of legality and the protection of individual rights against arbitrary power.

A second opinion is attributed to the Swiss doctrine, which asserts that the first appearance of this principle can be found in the peasants' demands during the Peasants' War (1525), led by Thomas Müntzer. During this conflict, the peasants demanded that people be judged not based on the will of the lord but according to written law, highlighting the need to eliminate arbitrariness in the application of justice.

Thus, the origin of this principle is disputed, with each national tradition attributing its authorship to different events and historical documents.

In this context, custom should theoretically be entirely excluded as a source of law in criminal law, as custom, being an unwritten norm, contradicts the principle of legality, which requires clarity and predictability in legal norms. However, the issue is much more nuanced, as custom can play an indirect role in criminal law.

In the following, we will analyse the dual role of custom in this field, as well as its compatibility with the principle of legality:

1. Custom in the interpretation of criminal norms – Although custom cannot create offences or punishments in criminal law, it can influence the interpretation of certain criminal provisions. Criminal legal norms may refer to social practices, customs, or traditions to clarify certain concepts or behaviours. In this case, custom serves as a contextual element that helps interpret criminal norms without contravening the principle of legality.

An example in this regard could be the interpretation of socially acceptable behaviour within a specific cultural or local context, where criminal law refers to notions influenced by local customs or traditions. This is the case with Article 375 of the Penal Code – "Outrage against good morals." In the context of the principle of legality, the notion of good morals involves a subjective and occasional interpretation of a behavioural standard deduced from the impressions, values, and beliefs of the interpreter. The interpreter imagines ethical desirability and social normality according to their upbringing, inclinations, and the values of the society they are part of. The text highlights the idea that the legal interpretation of moral values is selective and influenced by subjective factors, thus creating a specific ethical model that is more inductive than deductive. This means that, rather than starting from abstract and universal principles to determine what is right or wrong, legal interpretation is based on pre-existing moral values, selected from the social and cultural context of the case. These moral values re-enter the legal sphere through a formal channel, namely through legislation and legal interpretation, but their effects on society are unpredictable and cannot be fully determined. In essence, good morals describe a closed, repetitive, relatively stable interpretative circuit within a specific time frame and geographic area, i.e., a process that self-perpetuates and is influenced by the specific context of each case, while also being guided by the ideology and subjective values of both the interpreter and the social group to which the interpreter belongs.

2. Custom as a supplementary element in legislative gaps – In certain legal systems, custom can play a supplementary role in the absence of clear legislative provisions, but not in the sense of creating new offences or punishments. Custom may complement criminal law in terms of procedural aspects or the manner in which certain norms are applied, as long as it does not violate fundamental rights or the principle of legality. This is the case in religious legal systems where written and official law coexists with customary legal systems of religious origin, and customs, traditions, or unwritten rules are used as the primary means of resolving conflicts within those social groups. A distinctive feature of these religious legal systems is the overlap between the legal and religious spheres, meaning that legal norms and regulations are largely influenced or dictated by

religious principles and laws. This overlap strongly contrasts with secular legal systems, which promote a clear separation between legal norms and religious ones, establishing that a state's laws should be independent of religious influence.

In conclusion, while custom cannot be a primary source of law in criminal law, it can play an interpretative or supplementary role in certain legal systems, helping to clarify and apply written norms. This dual role of custom is permissible to the extent that it does not contravene the principle of legality, which remains essential in regulating criminal behaviour *(Manea, T. 2001, p. 87).*

I.4 Public International Law

Custom is recognised as a source of law in public international law, playing a significant role in regulating relations between states *(Niță, M., 2022, pp. 215-223).* According to Article 38, paragraph 1 of the Statute of the International Court of Justice, international custom is considered one of the main sources of international law, alongside international conventions (treaties), general principles of law, judicial decisions, and the doctrines of the most highly qualified jurists. International custom is defined as a generally accepted practice, which, through its constant and uncontested repetition, gains the status of a legal norm. It is recognised and applied by states in their mutual relations, and adherence to custom becomes binding for states that accept and follow it *(Droubi, S., d'Aspremont, J., 2020, pp 216-225).* This form of unwritten law is rooted in the necessities of social life at the international level and the demands of international life, which require standardised rules and behaviours to ensure stability and predictability in international relations *(Johnston, K., 2021, pp. 1175–1184).*

The International Court of Justice has also recognised that international customs can be formed not only through the actions of states but also through the general practice of international organisations *(De Bartolo, D., 2017, pp. 174–178).* This means that, through repeated and accepted behaviours by members of international organisations, unwritten rules can crystallise and acquire binding force. One example of such a custom is the recognition that a voluntary abstention from voting by a member of the United Nations Security Council does not constitute an obstacle to the adoption of a resolution. In other words, it has become a customary rule that if a Security Council member abstains from voting, this does not equate to a veto and does not prevent the adoption of a resolution, provided that the required majority of votes is present. This example shows how the practice of international organisations can lead to the development of customs that play a vital role in international law, contributing to the establishment of rules governing relations between states and between organisations.

In relations between states, a repeated and consistent practice does not automatically become international custom if it is not accepted by states as having binding legal force. In this case, the practice remains a mere usage, which belongs more to the realm of morality or international courtesy, without having the character of a legal norm. A classic example is diplomatic protocol *(Popescu,*

C.F., 2022, pp. 253-258), which regulates certain behaviours and ceremonies in diplomatic relations but does not have the binding legal force of an international custom *(Popescu, R.M., 2023, pp. 40-41)*.

For a practice to acquire the status of international custom, it must meet two essential cumulative criteria. The first element requires the existence of a consistent and coherent practice by states, materialised in their conduct. The practice must be applied repeatedly and continuously in relations between states, with broad applicability and acceptance by the states involved *(Roughan, N., 2009, pp. 305–313)*. The second element is the psychological aspect (opinio juris): in addition to factual repetition, states must be convinced that following that practice is not merely a convention or form of courtesy but a legal obligation. States must implicitly or explicitly recognise that the practice in question has the force of an international legal norm, which must be respected as a matter of legal obligation.

International custom develops through the practice of states and opinio juris, that is, the general belief of states that the respective practice is legally binding, not just a political or diplomatic convention. Examples of international customs include aspects related to international practice based on the air codes of states, on the provisions of treaties in the field of aeronautical law. These customary norms establish that states exercise full and exclusive sovereignty over the airspace above their territory *(Miga-Beșteliu, R., 1997, p. 53)*.

It is challenging to demonstrate that a practice has been applied sufficiently consistently and generally by states to be considered a custom. This requires evidence showing the continuous and uncontested application of the norm by a significant number of states. Even if the existence of custom is recognised, it is sometimes difficult to determine exactly what it regulates due to the unwritten and flexible nature of the norm *(Bederman, D. J., 2010, pp. 31–50)*.

Customary norms must align with peremptory norms (jus cogens) of international law. Jus cogens norms are rules that cannot be derived, modified, or overridden by the agreement of states and hold fundamental importance, such as the prohibition of genocide or slavery *(Bordin, F.L., 2022, p. 73)*. Moreover, if there is a conventional norm (a treaty or written agreement), it takes precedence over customary norms. In practice, customary norms are supplementary, being applied only in the absence of written rules regulating the same matters.

CONCLUSION

Custom is not only a source of law but also a reflection of the values and mindsets of a society, contributing to the formation of a normative framework that has evolved alongside society itself, developed through the repeated and constant application of a legal idea in numerous individual cases, that is, through the accumulation of precedents over a long period. Essential to the emergence and

existence of custom is that this practice is old, uncontested, and recognised by the community as a valid legal norm that can be legitimately invoked in similar cases.

Customary norms represent rules whereby a behaviour becomes obligatory due to habit, meaning through the adoption and constant repetition of that behaviour by the majority of members of a society. When people living in a community behave similarly over a period of time under similar conditions, the desire to conform to those behaviours gradually forms, influenced by the majority.

At first, the subjective sense of these acts does not carry the character of obligation. People simply follow certain behaviours without feeling any formal compulsion. However, after a period of constant repetition of these acts, the idea forms in the mind of each individual in the community that they must conform to the norms that others follow. At the same time, the desire arises for other community members to also follow these rules, thus creating a sense of collective obligation.

This process transforms a custom, which at first is merely a voluntary practice, into a customary norm. Thus, custom becomes obligatory when community members perceive the adopted behaviour as not just a simple convention but a rule that must be respected by all. In this way, customary norms acquire legal force, even though they are not formalised by written law.

Research into the phenomenon of custom is far from exhausted. The fields of commercial law and mediation are extremely vast and complex, offering many opportunities for further in-depth studies. Commercial law, covering aspects such as commercial transactions, contracts, corporations, and competition law, is constantly evolving, especially in the context of globalisation and the development of international trade. Commercial customs and business practices may vary from country to country and even from industry to industry, providing material for comparative analysis.

In the same vein, mediation, as an alternative method of conflict resolution, is becoming increasingly relevant due to the growing need for efficient and swift solutions in the context of commercial disputes. Studying mediation practices and customs related to them can provide valuable insights into how parties can reach amicable solutions without resorting to courts.

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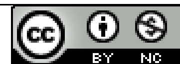

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