ABVV-FGTB
Ensemble, on est plus forts
Samen sterk

FGTB-ABVV document on the analysis of jurisprudence concerning reclassification of the status of platform workers across Europe

This document gives an analysis of jurisprudence concerning reclassification of the status of platform workers across Europe and aims to be as exhaustive and up-to-date as possible (until the midst of February 2021). It covers all decisions made by the tribunals, courts and jurisdictions of various European states, as part of the trend of reclassifying the employment relationship between workers and the platform that employs them.
This memorandum covers all this research and summarises (where this was not prevented by language barriers) the arguments put forward in order to reclassify the employment relationship.

1) **France** has already issued a variety of judgments and rulings concerning the status of the employment relationship between workers and platforms. The jurisprudence is **not consistent** regarding this question. While we can legitimately assume that the March 2020 ruling of the Court of Cassation, which considers that the relevant persons are salaried and not self-employed workers, sets a precedent, the subsequent rulings of the Paris Court of Appeal contradict this logic, by denying that a subordinate relationship exists;

2) **Spain** has already issued a number of decisions relating to classification of the relationship between workers and platforms. Since late 2019, there has been a trend towards considering this relationship to be that of a **salaried employee.** This trend was established and confirmed by the Spanish Supreme Court in September 2020;

3) **The Netherlands** has so far issued a number of decisions, which are interesting, not only in terms of reclassifying the employment relationship, but also the consequences arising from reclassification as salaried workers. The court referred to a previous reclassification judgment, according to which delivery workers can benefit from social security rights, as well as a series of other rights, to which they would normally have been entitled as **employees**;

4) **In Italy,** jurisdictions have tended to reclassify the relationship between platforms and workers, by confirming that it is a **salaried** employment relationship. It should also be noted that Italy recently ruled that the algorithm was based on a policy of discriminatory classification;

5) **The United Kingdom,** due mainly to its specific legal framework that establishes the existence of a third status (*"worker"*), has **not yet established any jurisprudence** regarding this matter. Any decisions issued are also **contradictory** and it is currently not possible to know which trends will emerge in this country in the future;

6) On two occasions, **Germany** has responded negatively, by **refusing to assign salaried worker status to platform workers.** However, it has innovated by introducing a specific category for platform workers who conduct micro-tasks ("crowdworkers"), as it considers that they provide services as part of a salaried employment relationship;

7) **Switzerland** recently issued a judgment, in which the **salaried nature** of the employment relationship was recognised;

8) **Belgium** is a special case within this jurisprudential landscape. No court proceedings have so far taken place, in which a ruling was issued concerning the nature of the employment relationship between service platforms and workers. Only two decisions have been issued by the Administrative Commission for the regulation of employment relationships, the first of which was rapidly invalidated by the Brussels labour court for procedural reasons. Classification of the employment relationship is due to be examined by this court in September 2021.

1 Introduction

Over the last few years, there has been a growing wave of jurisprudence across various European states leading to reclassification of the employment relationship between workers and the platforms, for which they work. At the moment, we can clearly speak in terms of **a tendency to recognise a salaried employment relationship,** despite the jurisprudence still being slightly fragmented, both between states and within these states (all the courts and tribunals within the same country do not necessarily make the same decisions, as they examine cases of a specific nature and not the phenomenon as a whole). However, these decisions are often based on the same arguments.

2 France

2.1 Ruling of the Court of Cassation of 28 January 2018 (Take Eat Easy)[1]

The Paris Court of Appeal ruled against the worker and considered that the courier was a self-employed worker as:

- He was not linked to the platform by an exclusive or non-competitive relationship;
- Every week, he was at liberty to determine his own time slots, during which he wished to work, or he could decide not to select any at all if he did not wish to work.

The courier introduced cassation proceedings, so that the Court of Cassation ultimately cancelled this ruling and established that a subordinate relationship existed. The existence of an employment relationship could not be ruled out as:

- The geolocation system enabled the company to monitor the location of the courier in real time, and
- The platform was able to exercise a power of sanction.

2.2 Ruling of the Paris Court of Appeal of 10 January 2019 (Uber)[2]

The court considered that the relationship between drivers and the Uber platform is an employment contract as:

- One of the essential conditions for self-employed status is that the person must freely choose to set up his business/activity, organise his own work tasks and look for customers/suppliers (which was not the case in this instance);
- The driver entered into a commitment with Uber by signing a “partnership registration form”, obtaining his “professional driver’s card for passenger vehicles” and signing onto the “Sirene register, as a self-employed person”;
- A body of evidence indicates a subordinate relationship:
    - Uber had deactivated the driver’s account, thus preventing him from receiving new reservation requests;
    - The driver was not able to establish his own customer base (option prohibited by Uber);
    - The driver was not free to set his fares or conditions for the provision of transport services;
    - Uber conducted checks on the driver as, after refusing three requests, he received the message “Are you still there?”
    - If the driver decided to disconnect, Uber reserved the right to deactivate or otherwise restrict access or use of the application. This has the effect of encouraging drivers to remain connected in the hope that they may be asked to make a trip, which means they are always at Uber’s disposal for as long as they were connected. But they are not able to choose freely, in the same way as a self-employed driver, trips that would be convenient for them;

[1] https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/1737_28_40778.html (in French only).

[2] https://www.legalis.net/jurisprudences/cour-dappel-de-paris-pole-6-ch-2-arret-du-10-janvier-2019/ (in French only).

- The fact that he could choose his own hours and days when he was connected does not in itself exclude a subordinate employment relationship, as it has been shown that, when a driver is connected, he forms part of a service organised by the Uber company, which gives him instructions, monitors their execution and exercises a power of sanction in relation to him.

2.3 Ruling of the Court of Cassation of 4 March 2020 (Uber)[3]

Uber filed an appeal in cassation following the Paris Court of Appeal ruling of 10 January 2019 (see above section). However, the Court of Cassation ruled in favour of the worker, by confirming the ruling previously issued by the Court of Appeal.

The Court of Cassation considered that the employment relationship between the driver-accompanied car transport company and the worker was a traditional relationship between an employee and his employer, which is characterised by the subordinate relationship that links them. The court also stated that self-employed worker status (under which all drivers linked to the company operate) was, in this case, notional. A number of arguments confirmed the existence of a subordinate relationship:

- The use of geolocation and sanctions;
- The fact that the driver was free to connect when he wished was not decisive: what matters is the fact that he was subject to subordination once he was connected;
- The fact that he did not have his own customers;
- He was not free to set his own tariffs;
- The fact that he could not determine conditions for provision of the transport service.

2.4 Two rulings of the Paris Court of Appeal issued on 8 October 2020 (Tok Tok Tok)

We may have expected the Court of Cassation ruling mentioned in Section 2.3 to establish jurisprudence but, on 8 October 2020, the Paris Court of Appeal issued two rulings, in which it considered that cycle couriers are service providers and not salaried employees. The court arrived at the conclusion that a subordinate relationship did not exist, by making the following points:

- The delivery workers were free to organise their work and working times;
- The imposition of tariffs is not prohibited in the service contracts;
- The delivery workers were unable to prove that they were under continuous surveillance using geolocation and received orders, as well as instructions;
- The option, written in the contract, of cancelling the latter would not be incompatible with a business relationship.

3 Spain

3.1 Judgment of the Social Affairs Court, Valencia – 1 June 2018 (Deliveroo)[4]

This was the first judgment to be issued in Spain, which led to reclassification as a salaried employment contract: the judge concluded that an employment relationship existed by highlighting a form of dependence between the worker and the platform. Deliveroo withdrew its appeal against this judgment, thus rendering it definitive, which set a new precedent in Europe. The following arguments were put forward by the judge:

- The courier is monitored using GPS with geolocation, which also makes it possible to monitor his working hours;
- The platform is recognised as a means of production: the application and website belong to Deliveroo, which prevents the courier from having his own business structure;
- The price is fixed by the platform;

[3] https://www.courdecassation.fr/jurisprudence_2/chambre_sociale_576/374_4_44522.html (in French only).

[4] https://adriantodoli.com/wp-content/uploads/2018/06/documento-2.pdf (in Spanish only).

- The worker does not know in advance which restaurants are listed on the application or whether there are many or few orders at each of the restaurants (lack of information).

The court ruled that the dismissal of the courier was inadmissible and the platform must compensate the worker for unfair dismissal, by paying him 700 €. Officially, the platform explained that it had abandoned its appeal as the costs would greatly exceed the amount in dispute and it would have other opportunities to defend its model.

It should be noted that the Social Affairs Court in Barcelona issued a judgment based on similar arguments on 29 May 2018[5].

3.2 Judgment of the Social Affairs Court, Valencia – 10 June 2019 (Deliveroo)[6]

The judge considered that salaried worker status mainly resulted from the fact that:

- Delivery workers in Valencia were required to follow instructions from the company;
- In June 2016, Deliveroo organised real training procedures, with interviews, video training sessions and provided couriers with directions;
- The company then announced new conditions, calls to order, meetings and even dismissals, thus using the power of direction in the most traditional sense of the word;
- The judge considered that the real means of production of these workers was not their bicycles or GSM but the digital platform.

As a result, the employment relationship was recognised between the platform and 97 of its delivery workers.

3.3 Judgment of the Social Affairs Court, Madrid – 23 July 2019 (Deliveroo)[7]

The Deliveroo platform was condemned for failing to declare that about 500 delivery workers were working for the platform in Madrid. In this way, the company avoided paying €1.2 million in social security contributions. The court noted that the workers declared as being self-employed were in fact subject to an employment relationship as:

- Once the order was accepted, the delivery worker was required to honour it by following the detailed instructions issued by the company, without a significant margin of autonomy for the worker;
- More experienced delivery workers were sent to accompany new colleagues on their first trips in order to teach them the mechanics of the service;
- The actual margin of autonomy for the worker was actually limited to choosing the means of transport (bicycle or scooter), route and the option of rejecting an order, which led to the risk of his order volume decreasing.

3.4 Judgment of the Superior Court of Justice, Madrid – 27 November 2019 (Glovo)[8]

The court judged that the relationship between the platform and the worker (courier) formed part of a salaried employment relationship and denied that it was an autonomous and independent activity. The judgment considered the worker's dismissal to be abusive and ordered either his immediate reinstatement, subject to the same conditions, but as a salaried worker with an "normal" employment contract, or compensation amounting to 2,416.70 €.

In addition, the judge rejected the arguments of Social Court N°17 of Madrid, which, in its judgment of January 2019, considered that a contractual relationship existed with the self-employed worker as the

---

[5] http://www.poderjudicial.es/search/AN/openCDocument/b53dbcb9ff9f0d1463934a740706d6a7179e3f439af7b2cc (in Spanish only).

[6] http://www.poderjudicial.es/search/openDocument/d2edb9c077f3f521 (in Spanish only).

[7] https://www.laboral-social.com/sites/laboral-social.com/files/Jdo_Social_19_Madrid_22_julio.pdf (in Spanish only).

[8] http://www.poderjudicial.es/search/openDocument/6d04f28f2ec990a2 (in Spanish only).

courier set his own organisational criteria and assumed responsibility for risks, as well as the success (or failure) of his business.

3.5 Ruling of the Supreme Court of Spain – 25 September 2020 (Glovo)[9]

The magistrates considered that couriers working for the Glovo platform are not self-employed workers and recognised the salaried employment relationship between the worker and employer. In order to arrive at this conclusion, they put forward the following arguments:

- The Glovo platform is not a simple intermediary in the conclusion of contracts between traders and couriers: instead, it is a delivery and courier service company, which unilaterally determines essential conditions for the provision of services;
- In addition, the platform owns essential assets for the business, while making use of couriers who do not have their own business organisation and whose work is conducted as part of the organisation pre-determined by the platform;
- The company uses computer-based tools for order and delivery management: it owns the digital infrastructure, which is considered an essential production factor.

4 The Netherlands

4.1 Judgment of the District Court of Amsterdam - 15 January 2019 (Deliveroo)[10]

The court concluded that an employment relationship existed between the couriers and the platform, based on the following arguments:

- Most couriers were working full time for Deliveroo;
- The workers wore clothing with the company logo;
- The recruitment conditions are standardised without any possibility of individual arrangements.

It should be noted that Deliveroo appealed against this decision.

4.2 Judgment of the District Court of Amsterdam - 26 August 2019 (Deliveroo)[11]

The case was brought by the Industry Pension Fund for Professional Road Transport. Deliveroo was ordered to pay 640,000 € to a pension organisation for a backlog of pension contributions dating back to 2015. Referring to the judgment issued in January 2019, the court recognised that 2,000 Deliveroo delivery workers had employee status. As a result, they were subject to the collective agreement for goods transport and the platform must therefore pay salary contributions, including for the pension insurance managed by the pension fund.

5 Italy

5.1 Cases of reclassification

On 10 September 2018, the Court of Milan ruled that a courier providing services via the Glovo platform was a self-employed worker as he was, according to the judge, free to decide if and when he was available[12].

[9] http://www.poderjudicial.es/search/openDocument/05986cd385feff03 (in Spanish only).

[10] https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:198 (in Dutch only).

[11] https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:6292 (in Dutch only).

[12] http://www.lavorosi.it/fileadmin/user_upload/GIURISPRUDENZA_2018/Trib._Milano-sent.-n.-1853-2018.pdf (in Italian only).

On 24 January 2020, the Court of Cassation stated that employment protection provisions applied to a group of couriers working for the Foodora platform, as the services provided were organised entirely by the platform's customer[13].

On 24 November 2020, the Court of Palermo ordered the reinstatement of a Glovo courier, while reclassifying his employment relationship as that of a salaried worker. As his autonomy was considered by the court to be purely symbolic, the worker must have benefited from a permanent full time contract, with his pay being determined according to the applicable collective agreement for the sector (in this case, the retail sector)[14].

5.2 Ruling issued by the Court of Bologna on 31 December 2020 (Deliveroo)[15]

It should also be noted that one case did not directly concern the status, under which the worker conducted his work, but something that often matters more when working for a platform: how the algorithm works. The latter is often considered quite undemocratic and opaque. The Court of Bologna recently considered that Deliveroo's reputation rating system, which is calculated and managed via an algorithm, is discriminatory. This is the first time in Europe that a judge has ruled that the algorithm is blind and indifferent to the needs of couriers who are not machines but workers who have rights.

Therefore, the reputation and performances of delivery workers are classified without any contextualisation: it can downgrade a delivery worker who fails to do his work or does it badly, in the same way as a delivery worker who is ill or on strike. This represents a major victory and progress in terms of the social rights of platform workers. The platform denied that it used this type of classification system but was still ordered to pay 50,000 € in damages and interest to the plaintiffs, and to publish the decision on its website.

6 United Kingdom

6.1 Judgment of the Employment Tribunal - 28 October 2016 (Uber)[16]

In this case, the tribunal placed Uber drivers in an intermediate category of workers (as this country has a third intermediate "*worker"* status), according to the provisions of the English law concerning employment rights. This status entitles the worker to a minimum salary and protected working hours.

On 31 October 2018[17], the Court of Appeal, while focusing specifically on employment-related issues, confirmed that the platform exercised significant control over the way, in which the drivers conducted their work.

6.2 Decisions of the Central Arbitration Committee and High Court – 14/15 November 2018 (Deliveroo)[18]

However, these jurisdictions ruled that workers in the food delivery sector did not have collective and statutory employment rights by virtue of a substitution clause in the contract (the latter would have to be added personally as part of a difficult process), which ruled out their classification as salaried workers.

7 Germany

[13] https://www.lavorodirittieuropa.it/images/Cassazione_Foodora-.pdf (in Italian only).

[14] http://www.rivistalabor.it/wp-content/uploads/2020/12/Trib.-Palermo-24-novembre-2020-n.-3570.pdf (in Italian only).

[15] http://www.bollettinoadapt.it/wp-content/uploads/2021/01/Ordinanza-Bologna.pdf (in Italian only).

[16] https://www.judiciary.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf (in English only).

[17] https://www.judiciary.uk/wp-content/uploads/2018/12/uber-bv-ors-v-aslam-ors-judgment-19.12.18.pdf (in English only).

[18] https://www.bailii.org/ew/cases/EWHC/Admin/2018/3342.pdf (in English only).

Two decisions[19] were issued by the German courts, which refused to recognise the salaried status of platform workers.

However, Germany is at the forefront of jurisprudence concerning a particular form of platform work: micro-tasks ("crowdwork"). In fact, on 1 December 2020, the German Federal Labour Court[20] stated that these particular workers could be considered to complete their work tasks as part of a salaried employment relationship.

8 Switzerland

In a judgment issued by the Cantonal Court of Vaud on 23 April 2020[21], the Swiss jurisdiction considered that a driver working via the Uber platform did so with salaried worker status and that the platform was an employer. Uber decided not to appeal against the decision before the Federal Court. This judgment was unprecedented in Switzerland. The platform had deactivated the driver's account, which, according to the court, actually represented unjustified dismissal with immediate effect as the worker was not aware of the complaints made against him and therefore unable to defend himself.

9 Belgium

9.1 Judgment of the Brussels French-speaking Labour Tribunal - 3 July 2019 (Uber)[22]

In early 2019, the Administrative Commission for the regulation of employment relationships was contacted by a platform worker in order to request reclassification of his employment relationship. The platform "suggests" that couriers (or forces couriers to) provide their services as self-employed workers, via a service agreement. The commission quickly ruled that the documents provided by the worker were sufficient to contradict the self-employed worker classification imposed by the platform and recognised a salaried employment relationship. The employment tribunal**,** however, invalidated this decision for reasons of competence, as it considered that the commission could not make any decisions in this case as, when the application was submitted, the competent departments of the social security institutions had opened criminal proceedings via the Labour Inspection Agency, which have been in progress since October 2017.

In terms of whether the court should issue a ruling concerning the employment relationship and supersede the decision of the commission, the court answered in the affirmative and proposed to open pleadings on 6 September 2021.

9.2 Decision of the Administrative Commission for the Regulation of Employment Relationships - 26 October 2020 (Uber)[23]

The commission reaffirmed that the conditions for execution of the employment relationship were, in this case, incompatible with self-employed worker classification. The case in question is highly complex as it involves a variety of contracts, all of which are amendments to a framework contract between the driver and the Belgian Platform Rider Association (BPRA), the validity of which is subject to an additional service contract concluded between the worker and Uber. The provision of work is entirely regulated by Uber and the worker is paid by the latter. This complex legal framework, however, leads the commission to consider that Uber and the non-profit organisation BPRA are both employers of the worker.

[19] https://www.iww.de/quellenmaterial/id/212732 & https://www.iww.de/quellenmaterial/id/214078 (in German only).

[20] http://juris.bundesarbeitsgericht.de/cgi-bin/rechtsprechung/document.py?Gericht=bag&Art=pm&nr=24710 (in German only).

[21] https://www.findinfo-tc.vd.ch/justice/findinfo-pub/html/CACI/HC/20200727101955398_e.html (in French only).

[22] http://terralaboris.be/spip.php?article2833 (in French only).

[23] https://commissionrelationstravail.belgium.be/docs/dossier-187-nacebel-fr.pdf (in French only)

10 Conclusions

This overview confirms the European tendency to reclassify the employment relationship between workers and platforms, as well as the topical nature of this question. This overview also demonstrates the need to finally safeguard the situation for all these workers, simply by recognising them for what most of them are: salaried workers. Although certain nuances may be necessary within this overall conclusion (for example, when categorising platforms), this must not distract us from the fact that most of these persons fully meet the conditions required for salaried worker status. Most of these platforms do not offer new forms of work, but a model, which is likely to extend to too many or all sectors (the process is already underway).