



**Philippe Durand**  
Associé/Partner



**Alexandre Dumortier**  
Avocat/Associate

### **FRANCE: a new setback for the gig economy**

The decision issued by the Paris Court of Appeal on 10 January 2019 about Uber is on the front page. This is the first time in France that Uber drivers win the right to be deemed as employees rather than independent contractors. The Court rejected Uber's credo that it is merely a service provider with drivers who are self-employed, able to work when and where they want. The decision overturned a lower court ruling in favour of Uber.

#### **Background**

One driver had filed a lawsuit in June 2017. He complained that Uber had deactivated his account, depriving him of the possibility of receiving new booking requests generating as a consequence the effects of an unfair dismissal. As the first Labour Court had ruled it lacked jurisdiction to review this case due to the absence of an employment contract, the claimant (who argued that he had effectively been working for Uber through 2,032 15 to 20-minute fixed-term employment contracts) decided to appeal the first decision before the Paris Court of Appeal.

The driver's argumentation mostly relied on Uber terms in which the company imposes certain requirements as to how the drivers must provide the services. The Court decision may be applicable beyond this particular case and its impact is then enhanced.

According to French general principles of law, the employee is a worker who performs his/her tasks under a subordinate relationship. This is characterized by the performance of work under the authority of an employer who (i) has the authority to issue orders and directives, (ii) to check its performance (iii) and to punish any breaches.

#### **A broad range of evidence**

The Paris Court of Appeal has found there was a sufficiently broad range of evidence to characterize a subordination (employment) relationship between the driver and the Uber Company. The decision is based on the following elements:

- Drivers are not in a position to develop their own customer base. According to Uber terms, it is forbidden for drivers to contact users or to keep any personal data;
- All rates are calculated through the Uber App. Moreover the route is determined by Uber itself who is then in a position to reduce the applied rate in case of alternative and ineffective route followed by the driver;
- Drivers are subject to several directives. Uber indeed advises its drivers for instance to follow the Uber App GPS and to wait 10 minutes for the user at the beginning of the ride. Behavioral guidelines are also defined by Uber regarding for instance conversations with passengers;

- The driver's activity is monitored through the App. For instance, after three consecutive refusal, a pop message saying "Are you still there?" is sent to the driver. The Paris Court decision links that monitoring to Uber's capacity to deactivate or suspend the driver's account, which leads them to have the relevant app switched on at all time;
- Uber has a sanctioning power by setting up a rating system that is similar to a performance/disciplinary procedure which can lead to the automatic logging-off of drivers who did not comply.

Hence, the Paris Court of Appeal concluded that a former driver using the Uber app was actually bound to Uber through an employment relationship.

### **Implications**

This landmark decision is similar to a recent ruling issued in November 2018, in which the "Cour de Cassation", France's highest appeal court had ruled that a delivery bike rider using the services of an online food delivery platform must be viewed as an employee as well.

At a European level, this decision regarding drivers' rights is not unprecedented. The French court of Appeal ruling follows a UK Court of Appeal Decision last December (Uber BV v. Aslam and others, Case n°: A2/2017/3467) that found that Uber drivers were not self-employed but regular "workers" who qualify in the UK for basic rights such as minimum wage, holiday and sick pay (even though the concept of "worker" under UK Law is not exactly the same as the one of an "employee" under French law).

Uber has already announced that the French court decision will be appealed in front of the "Cour de Cassation". This Uber case should be an opportunity for the "Cour de Cassation" to file a request for a preliminary ruling by the Court of Justice of the European Communities, as mentioned by Mr. Huglo, Senior Judge at the Labour Chamber of the "Cour de Cassation" (SSL n° 1842-1843, December 24<sup>th</sup> 2018). The European concept of worker set by the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of working time organisation may then be applicable to so-called "independent workers" acting for those platforms. There should be no endpoint on this before two or three years.

The ultimate solution is a question of survival for Uber and other players of the gig economy who might face on this ground numerous claims from workers and also from local social security authorities, such as the French URSSAF (authority in charge of collecting all employers' contributions).

***Cour d'appel de Paris, 10 January 2019, RG 18/08357.***