

**PLATFORM WORKERS: NO EMPLOYMENT
CONTRACT WITHOUT A SUBORDINATION**
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In a decision of April 13th, 2022 ([n°20-14870](#)), the French Supreme Court confirmed the criteria along which an independent worker should in fact be considered an employee.



What were the arguments used to ground the independent worker's claim?

The claimant entered into two contracts with an online platform, the first to rent a car and the second to be a member of the platform and thus be listed as a driver. The independent worker filed a claim with the Employment Tribunal to have the contractual relationship recharacterized as an employment contract.

To ground his claim, the claimant argued that his work was performed within an organized service where the working conditions were set by the platform unilaterally, including:

- ✓ The choice of car to be used;
- ✓ The mutual dependency between the rental agreement and membership to the platform
- ✓ The GPS allowing to locate the car and thus make an efficient choice to allocate the customer's demands;
- ✓ The price of the services.

The Paris Court of Appeal upheld the driver's claims also adding that the rating system could amount to a disciplinary system (which is tantamount to an employment relationship).

The employer appealed the decision before the Supreme Court.

? What did the French Supreme Court decide?

In its decision of April 13th, 2022, the French Supreme Court overruled the decision of the Court of Appeal, reminding that:



- ✓ An employment contract is characterized by a permanent subordination of the worker towards the employer
- ✓ The subordination is defined as the performance of work under the authority of an employer who has the power to give orders and directives, to control their execution and to sanction misconducts.

In this respect, the existence of an organized service the functioning of which is unilaterally decided by the ordering company is a mere hint of such subordination.

If there is no sufficient evidence of a subordination, then no employment contract is characterized. In the present case, since the platform did not send directives as to the means to perform the services (e.g. no specific route to be used), had no possibility to monitor the respect of such guidelines nor to sanction the supplier, it could not be considered as the driver's employer.

Previous cases, including the "Uber" Case of March 4th, 2020 provide examples of what practical aspects may lead to recharacterization. There is no doubt that more cases on this topic will follow.

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