The Concept of “Worker” in European Law
Review of the Recent Case-Law of the European Court of Justice

By Vincent Février*

Poster prepared for the Early Career Scholars in Labour and Social Law Conference Antwerp, 10th May 2019

Aim of the study: the concept of “worker” is not unknown in EU Law, but there is no uniform definition of it. A first definition was given by the ECJ in the arrest Lawrie-Blum (1986). The concept of worker is used inter alia to distinguish the scope of application of the freedom of establishment of article 49 of the T.F.E.U. and the freedom to provide services of article 56 on one hand, and the free movement of workers of article 45 on the other hand. Van Peijpe (2012) analysed two arrests, Jany and Van der Steen, which diverged quite strongly from the conditions from arrest Lawrie-Blum. My intend is to find if these arrests remained isolated and if Lawrie-Blum was generalised by the Court in these matters through a case study of the Court case-law between 2013 and 2018.

Main findings: Lawrie-Blum applied most of the time BUT two interesting cases: EEAE (C-555-11) and Zako (C-452/17). Both cases, which concern requests on preliminary ruling in secondary law, depart strongly from Lawrie-Blum, each following a different reasoning.

EEAE:
✓ Can be compared with Van Der Steen
✓ The employer is responsible for the activity of its worker if this activity falls within the context of the link of subordination
✓ Extension of the scope of the link of subordination

Zako:
✓ Can be compared with Jany
✓ To conclude to an independent worker, the subordination link is not sufficient. The “methods by which the worker performs his duties” must be separately and cumulatively checked in order to determine if it does not lead to dependency
✓ Examples: presence at the contracting party’s premises, organisational facilities, decrease of economic risks

Conclusions: No generalisation of Lawrie-Blum yet and the cases studied by Mr Van Peijpe (2012) are not isolated.

Further questions raised by the research:
✓ What about primary law?
✓ Why maintain such different logics?
✓ Position of the Court on economic dependency? Scope of the link of subordination?

*PhD Candidate at the University of Liége – Supervisor: Prof. Fabienne Kéfer
Contact: Quartier Agora, place des Orateurs 3, 4000 Liége, Belgium- vincent.fevrier@uliege.be