

## **Does Gender Matter in the Civil Law Judiciary?**

### **Evidence from French Child Support Court Decisions**

Bruno Jeandidier, Cécile Bourreau-Dubois<sup>1</sup>, Jean-Claude Ray, Myriam Doriat-Duban (BETA, UMR CNRS 7522, Université de Lorraine)

---

<sup>1</sup> Corresponding author: [cecile.dubois@univ-lorraine.fr](mailto:cecile.dubois@univ-lorraine.fr)

# **Does Gender Matter in the Civil Law Judiciary?**

## **Evidence from French Child Support Court Decisions**

**Key words:** judicial decision-making; gender; family law.

JEL :K41-K36

### **Abstract:**

This article assesses whether and to what extent gender matters in one particular area of the civil law system, family law. Using a dataset of 2,000 child support decisions from French courts of appeal, we show that in a civil law system like that in France, the gender of the judge does seem to matter. We find that this influence is likely to manifest itself in two ways. First, our results show that female and male judges do not make the same decisions: comparatively to the latter, the former (i) are more generous, fixing higher amounts of child support (the difference represents between 8% and 17% of the average amount of child support), and (ii) make more pro-mother decisions, regardless of whether the mothers are debtors or creditors. The magnitude of these differences is greater when the panel is composed of three female judges, comparatively to mixed or all-male panels.

### **Introduction**

Contrary to what is usually expected of the judiciary, court decisions may depart from pure neutrality. It is generally considered that judicial decisions should not be affected by the characteristics of the parties, however some empirical studies show that litigants are likely to receive different treatments according to their status: employers and employees in labor courts (Ichino *et al.*, 2003; Marinescu, 2011), consumers and suppliers (Martin Ruiz, 2014), private and state parties in environmental cases (Bentata, Espinosa and Hiriart, 2015). More precisely, these studies seem to show that judges are likely to be pro-plaintiff. In parallel, political science literature underlines the fact that the ideology, age, ethnicity or gender of judges act as possible determinants of sentencing outcomes, although not systematically for all courts (trial, appellate, supreme court level) and issue areas (criminal, civil cases) (Songer and Crews-Meyer, 2000; Kulik, Perry and Peper, 2003; Bonneau and Rice, 2009; Curry 2009). Although all individuals should be judged in the same way regardless of the identity of

the judge hearing the case, some empirical studies reveal that the personal attributes of the judges can have an impact on their judicial decisions. Finally, some studies show that the characteristics of the judge may interfere with those of the litigant. For instance, based on bail hearings of Arab and Jewish suspects in Israeli courts, Gazal-Ayal and Sulitzeanu-Kenan (2014) provide evidence of ethnic in-group bias in decisions to detain or to release on bail.

These results lead us to consider the issue of judges' discretionary power. This implies studying the flexibility allowed to judges by the judicial system, which can leave more or less room for the characteristics of the judge to influence the decision. In this respect, there are considerable differences between common law and civil law, as they do not share the same conception of judicial decision-making. As Schultz and Shaw (2013) mention it, in civil law countries, judges "act as anonymous interpreters of the law according to specified interpretation rules and pass judgements in the name of the state or the people" (p. 6), leaving no room for discussion on the influence of the characteristics of the judges. On the contrary, in common law, judges "have greater discretion in reaching their decision by 'distinguishing' the case in hand from precedents. They 'make the law'. The judgement is therefore more closely connected to their personality" (p. 6). In this context, it is not surprising that most of the empirical results on this issue are from research on common law, and mainly pertaining to the US judiciary, rather than to civil law countries.

However, even if the ideology of the neutrality and impartiality of judges is very strong in the civil law system, it would be interesting to study whether the way of judging or judicial outcomes can be impacted by the personal characteristics of the judges. To test whether judicial practices do sometimes depart from the ideology of impartiality, we study the case of child support decisions in the French courts. Until recently, French judges did not have any guidelines for child support orders and their practice was guided by a number of general principles provided by Code Civil. French law holds that the judge's decision must be made in line with the main principles of Family law and, at the same time, has to take into account the offers made by the parents and their situation. Consequently, the French judicial context has been leaving much room for discretionary decisions by judges (Bourreau-Dubois, Doriat-Duban and Ray, 2012). In this context, the characteristics of judges and litigants could play a role in judicial outcomes, in particular because the judge may share the same characteristics as one of the litigants (fatherhood, motherhood, gender, divorced status).

Using a dataset of 2.000 child support court decisions, from French courts of appeal, our article investigates two questions: (i) whether and in what ways the gender of the judges

makes a difference in sentencing outcomes, in this case the amount of child support, (ii) whether and in what ways judges are sensitive to the gender of the litigant, by examining in particular whether a gender in-group bias exists, resulting in judges upholding the claims of the litigant who shares the same gender as him or her.

This article is structured as follows. In the next section, we review the literature on gender and judging. Section 2 describes the divorce procedure in the French judicial system. Section 3 presents the data and some descriptive statistics. Finally, in section 4 we discuss the econometric results.

## **1. Gender and judging**

After comparing the gender difference issue in the two principal legal systems (1.1), we examine whether female judges decide differently from their male counterparts (1.2) and, if so, why (1.3).

### ***1.1. Legal systems and gender difference: a comparative analysis***

In common law countries, increasing scholarly attention has been paid to women and judging, the usual way of thinking about this issue being to look at the relationship between the gender of judges and their sentences. On the other hand, as Boigeol (2013) states, “in civil law countries very little research has been done on this subject. Nor is it a topic easy to approach as the first reaction of judges is always to reject the assumption that there might be any correlation between gender and judging” (p. 140). The source of these differences derives largely from the differences between the civil and common law judicial systems. More precisely, as pointed out by Schultz and Shaw (2013), to deal with the issue of gender and judging necessarily implies taking into account the specific features of the judicial systems.

In the two systems, two main specificities have to be considered. First, the routes to become a judge are not the same. In civil law countries, the judicial career is one of the different paths followed by law graduates. For instance, in France, judges must pass the prestigious competitive examination of the French National School for the Judiciary (Ecole Nationale de la Magistrature, ENM). Consequently, judges appointed by the French Ministry of Justice start their careers at the age of between 25 and 35 years. By contrast, in common law countries, judges are elected or chosen from among experienced legal practitioners, and consequently start in middle age. One of the consequences of this different way of selecting judges is that it is easier for women to enter the judiciary in the former system, as the access criteria for judicial positions are mainly academic results rather than professional networks

and achievements. Consequently, the gender difference issue is of less importance in civil law countries than in common law countries because gender discrimination against women is very low.<sup>2</sup>

Next, the two systems do not share the same view of the role of the judge. As Schultz and Shaw write: “[In civil law countries, judges] act as anonymous interpreters of the law according to specified interpretation rules and pass judgements in the name of the state or the people. Judges, in common law countries, have greater discretion in reaching their decision by ‘distinguishing’ the case in hand from the precedents. [...] The judgement is therefore more closely connected to their personality, and the reasoning in the decision will be more often scrutinized and criticized with a view to their personal character and background, i.e. financial, status, political affiliation, life experience as a man or woman, religious belief, sexual orientation, ethnicity and personal qualities” (Schultz and Shaw, p. 6). Concerning civil law countries, Schultz and Shaw even speak of “civil law ideology of the impersonal neutral judge applying the law in strict compliance with formalized rules [which] makes it almost a taboo to discuss influences of gender on judging in civil law countries” (p. 6).

The next question is whether the female judges really decide differently from male judges in general.

### ***1.2. Do women judges decide differently?***

There is a large body of research regarding the extent to which judges’ personal characteristics influence judicial decisions. In particular, as Rhodes states, quoted by Schultz and Shaw (2013, p. 34), a “cottage industry of empirical work has tried to disentangle the influence of gender on judging”. However, empirical support for the proposition that a judge’s gender influences the judicial outcome is mixed. Some research suggests that gender significantly influences the decisions of judges, while others argue that women do not judge differently from men. More recently, some authors have considered that to improve our understanding of judicial behavior, we need to include how individual characteristics play together, rather than examining those characteristics alone. For instance, studying criminal cases from a database on the US courts of appeal, Collins and Moyer (2008) show that there are significant differences in the voting behavior of minority female judges, since they are more likely than males and Caucasian females to support criminal defendants’ claims.

---

<sup>2</sup> There is no gender discrimination on admission to the legal system, although some authors, like Boigeol (2013), underline that a glass ceiling phenomenon may exist for reaching prestigious positions in the system.

Analyzing a data set of sentencing deviation cases of judges on US federal district courts, Tiede *et al.* (2010) show that female judges, especially when appointed by republican presidents, are less likely to favor defendants. Collins *et al.* (2010) examine whether women judges decide cases differently from men in US federal district courts. Although they admit that the answer depends on the circumstances, their empirical study shows that women jurists exhibit distinctive behavior when there is a critical mass of women. These differences are most significant in criminal justice cases and modest in civil rights and liberties cases, with gender not being significant in labor and economic regulation cases. Studying the decisions of US court of appeal judges, Scheurer (2014) show that female judges are more likely to vote liberally in civil rights and economic activity when at least 15% or more of the circuit is female.

The effect of gender on judging has been little explored in the area of divorce law. As in the other areas of law, the results are quite unsettled. Among these few studies, some focus on the influence of the judge's gender on the way of judging in family courts. Kohen (2008) studies how male and female family judges in Buenos Aires understand their profession and its requirements, their representation of the ideal family judge, their motivation in becoming family judges, the way they experience the power they wield, and their opinion on the supposed contributions women judges might make to the family judiciary. She concludes that there are no clear-cut differences between men and women in terms of their adherence to an ethic of justice or of care. Nor is there any real difference in the way judges reach their decisions: both women and men first decide on a fair solution and only then look for the law that would give that solution legal support. Distinct gender differences are apparent, however, in the way female judges approach decision-making. While men stress the importance of objectivity, neutrality and equidistance, women emphasize vocation, care and personal involvement. Differences can therefore be observed more in the decision-making process than in its outcome. For France, Bessière and Mille (2013) reach the same conclusion on the basis of interviews with family judges about their practice. On the contrary, other studies provide some support for the fact that female and male judges decide differently. Using French experimental data, Bourreau-Dubois, Doriat-Duban and Ray (2012) show that female family law judges set (slightly) higher amounts of child support comparatively to their male counterparts. Fuszara (2003) for Poland and Junqueira (2003) for Brazil show that there is some evidence that female judges tend to be less generous than their male colleagues, with respect to women asking for alimony, while this result is not supported by Dijksterhuis (2013) who studied the Netherlands. For the United States, Martin and Pyle (2005) demonstrate that

female justices on state high courts are more likely to uphold the female litigant in divorce cases than are male justices. These studies, although few in number, are quite interesting in that they show that the gender effect may not be specific to common law systems, but may also exist in some civil law countries (France, Poland, Brazil and Argentina).

Given that the results are mixed, if we do accept that female judges decide differently from their male counterparts, the question is why.

### ***1.3. Why would women judges decide differently?***

As Boyd *et al.* (2010) state, there are four main approaches to differences between the sentencing decisions of women and men judges. The first three are based on an individualistic view, while the fourth follows a more institutional perspective. According to the *different voice approach*, males and females develop distinct worldviews and see themselves as differentially connected to society. Consequently, we can expect male and female judges to differ in the way they conceptualize the question the court is addressing, as well as in how to resolve the dispute. As a result, differences in sentencing decisions are likely to emerge across virtually all areas of the law. The following two approaches, meanwhile, imply that the judge's gender matters only in specific areas of the law and that gender differences manifest themselves provided that the litigants' gender is taken into account. In the *representational approach*, female judges serve as representatives of their class and so work toward its protection in litigation of direct interest. Consequently, gender differences should manifest themselves in a smaller set of cases, especially those relating to women's issues, such as sex discrimination in employment or sexual harassment. In other terms, female judges are likely to uphold female litigants when they are involved in cases where they are socially discriminated due to their gender or, more generally, when they are vulnerable. Such an approach should be relevant in the area of divorce law: in this view, female judges are likely to support women who experience a more dramatic drop in their living standard than men, especially if they have children under their charge. The logic behind the third approach, *the informational approach*, is not that women judges uphold their own class. In this approach, the differences are said to result from the fact that female judges possess information that their male colleagues do not have, emanating from shared experiences with the female litigant. According to this approach, gender differences in judging should appear only on issues on which female judges may possess valuable expertise, experience or information. In particular, according to Boyd *et al.* (2010), gender effect should appear in employment discrimination cases, with female judges being likely to have common discrimination experiences emanating

from their work. This informational approach could be enlarged to divorce cases involving children. The gender differences could result from the fact that women judges possess more information on child costs than their male counterparts, given that mothers (which female judges may themselves be) are usually more involved than fathers (which male judges may be) in the daily maintenance of children.

In parallel to these three approaches, which are based on a purely individualistic perspective, some authors take account of the environment in which the judge makes their decision. The *organizational approach* considers that no difference should be noticed due to the fact that judges, both female and male, are the product of similar institutional mechanisms (Steffensmeier and Herbert, 1999). They undergo identical professional training, get their jobs through the same procedures and face similar constraints once on the bench. Other studies give support to this type of approach, considering that judges evolve in an institutional environment which necessarily has an influence on their behavior. For instance, Siegel (1999) argues that judges' decisions might not reflect their preferences, due to the role of institutional rules that have a compulsory nature and dictate standards of behavior. Finally, all these commonalities between male and female judges should be sufficient to "overcome any biological, psychological or experienced-based differences between the sexes" (Steffensmeier and Herbert, 1999, p. 1165). Given the specificities of the French judiciary, this approach should be quite relevant. In other words, no consistent relationship between the gender of the judge and sentencing should be found in France. Indeed, the way of recruiting judges contributes to homogenizing the way they judge, regardless of the gender or other attributes of judges. First, the French National School for the Judiciary (ENM), where all judges receive their training, favors the shaping of the judges in the same mold. Then, as those entering ENM, are mainly young graduate students with no professional or life experiences, they are malleable and easily acquire similar reflexes and ways of thinking (Boigeol, 2013, p. 141).

Applying the critical mass theory to the legal system, some authors consider that the differences between male and female judges should be apparent provided that the number of female judges on a court or in the legal system reaches a certain threshold (Sheurer, 2014). For the critical mass theory, when women comprise only a small percentage of an organization's members, women may feel they must act in accordance with the norms of the organization. If it is assumed that organizations are often male dominated, as more women join an organization, it will be more acceptable for women to deviate from the masculine norms of the institution. That said, in a highly feminized legal system, such as in France, the expected impact may be ambiguous. On one hand, the critical mass theory would suggest that

gender differences should be clearly observed since the critical threshold was reached a long time ago, in particular in the family law area. On the other hand, if we reverse the critical mass theory perspective, we could expect no behavioral differences in the sentencing decisions of male and female judges. It would be the case if male judges followed the norm of the feminized institution, due to their small place in the institution, in particular family courts.

Finally, Boyd *et al.* (2010) adopt an intermediate approach. They take into account the personal characteristics of the judge and his/her environment when he/she decides, but not the legal system in general, only the influence of the other judges when the decision is collegial. They thus make a distinction between two questions: whether and in what ways male and female judges decide cases differently (*individual effect*) and whether and in what ways serving with a female judge causes males to behave differently (*panel effect*). According to the assumption on the causes of the gender differences, the authors consider that we should observe a single individual effect in the case of the *different voice and representational approaches* or a twofold effect in the case of the *informational approach*, given that the information provided by female judges is likely to alter the choices made by males in case of collegial decisions. With our sample of divorce judgements in appeal courts, we can test these two effects (individual and panel), at least partially, on judgements about child support.

Finally, from a theoretical point of view, it is not easy to predict whether gender differences should be observed in divorce sentencing decisions in a civil law country, like France.

## **2. The French legal regime characteristics**

After underlining that the judiciary is highly feminized in France (2.1), contrary to common law countries, we present the French judicial proceeding in divorce cases (2.2).

### ***2.1.A feminized legal system***

The French judiciary is one of the most feminized in civil countries. Whereas women's representation in the judiciary remains low in common law countries (Feenan, 2009), the sex ratio in the judiciary is often close to the sex ratio in the overall population in civil law countries. In France, since the beginning of the 2000's, women have represented more than half of judges (Boigeol, 2013), this proportion being even significantly higher among *juges aux affaires familiales* who, among other things, set the amounts of child support in cases of divorce. Like in other civil law countries, this situation is due to the fact that judicial careers are facilitated through judicial qualifications (Feenan, 2009). For instance, in France, 60% of

French law graduates are female and, in 2009, men made up no more than 15% of candidates for the French National School for the Judiciary (Boigeol, 2013).

In France, this feminization is regarded as a problem by many judges and prosecutors, as it is associated with a certain devaluation of the institution of the judiciary. According to Boigeol, the real problem is not the feminization but the demasculinisation of the judiciary and the fact that men's low representation in the judiciary may matter to people who are seeking justice. In divorce, this point is quite a sensitive issue. The fathers' rights movements are regularly complaining that French judges adopt pro-mother decisions as regards child support amounts or children's residence time. According to them, this is due to the fact that, in trial courts, the judges who are in charge of family issues are mainly women.

## **2.2. *French judicial proceedings in divorce cases***

In France, a civil judicial procedure is compulsory in the event of divorce. The courts are therefore automatically involved in child support issues when parents divorce. In trial courts, a single judge directs the divorce proceedings (the *Juge aux Affaires Familiales* – JAF). The judicial decision is on the principle and consequences of the divorce, in particular for the children of the couple. More precisely, the judge makes four decisions regarding the children: the amount of child support, the child's habitual residence, non-custodial visiting rights and parental authority. Two situations may occur, depending on whether the parents reach an agreement about the amount of child support or not. In the event of agreement between the parents, the judge must check that the child's interests are sufficiently preserved. If the judges estimate that the award offered by the parents is not in the best interests of the child, they are likely to order a different amount. Empirical studies show, however, that judges usually approve the parents' proposal (Chaussebourg and Baux, 2007). Failing an agreement,<sup>3</sup> the judges have to set the amount of child support. Unmarried parents are not obliged to go to court to rule on the life of their child after the separation. If they do, it is often because they did not manage to find an agreement or in order to have their agreement validated by the judge. In this case, they can refer their case to a judge on one aspect only of the exercise of parental authority.

Until 2010, French judges did not have any guidelines, even of an indicative, to set the amounts of child support. However, their practice was guided by a number of general

---

<sup>3</sup> The parents do not reach an agreement on child support in one divorce out of ten, while in judicial procedures involving unmarried parents, there is disagreement in four cases out of ten (Chaussebourg and Baux, 2007).

principles. French law holds that the judge's decision must be taken in line with the main principles of Family law (child's interests, shared-parenting, spouses' interests) and, at the same time, must take into account the parents' proposal and situation. For instance, the child support ordered by the judge must fall within the bracket of the proposals made by the parents.

Whenever the parents do not agree with the trial court decision, they may appeal against this decision. The grounds of appeal may be plural. The appeal may be submitted on the principle (e.g. disagreement on the type of divorce determined by the judge of first instance) and/or on the consequences of the divorce (disagreement on one of the four child-related decisions, or on the division of marital property). For instance, in litigious divorce cases, one of the parents may not be satisfied with the decision of the JAF, who has to reconcile the offer of the debtor and the demand of the creditor parent. The former may appeal because he thinks that the child support amount set in first instance is too high, while the latter may appeal because she estimates it is too low.

On appeal, judicial decision making is collegial, as in other countries. The panel is made up of three members: a "president", a "rapporteur" and an "assesseur". Unlike the US system, however, the sentencing decision is made in the name of the group. In case of any disagreement, the decision shall be taken by the majority of the judges and no diverging views will be mentioned in the final sentencing decision. Consequently, while it is possible to know the composition of the panel, it is not possible to know who votes for what.

### **3. Data and descriptive results**

This section begins by the presentation of the data (3.1). The outcome variables are then presented in detail (3.2). Finally, we present some descriptive results (3.3).

#### **3.1. Data**

Our data come from the sentencing decisions of the French courts of appeal compiled, in the JURICA dataset by the French *Cour de Cassation*, the highest private law court in France. We have sorted this dataset by key words ("alimony", "children", "family court judge", "income") to form a sample of 2,000 relevant decisions concerning divorces with children. A check was carried out to ensure a representative sample by court of appeal. The judgments cover the period 2006-2010. A grid was established to systematically capture a range of information about each case (approximately 200 variables). As the sentencing decisions vary in their level of detail from one court to another (from one judge to another), some information is

unfortunately prone to be missing data. Since decisions are individual for each child, although the judge may make a similar decision for all children of the same family, the analyses conducted here relate to 3,605 individual decisions (children) before exclusions for missing data.

As mentioned in table 1, the presidents of the panels are slightly predominantly male (54% of cases), but the Judge-Rapporteur is a woman in 58% of cases *versus* 34%, given that in 8% of cases the identity of the rapporteur is unknown, which is a limitation of the source. In our sample, in 30% of cases, the president is also the rapporteur. The panel itself is predominantly female in 69% of cases: all-female panels in 26% of cases, predominantly female panels in 43% of cases, all-male panels in 6% of cases and predominantly male in 25% of cases.

**Table 1: by gender structure of court of appeal panels**

	President		Rapporteur			Total
	Male	Female	Male	Female	Unknown	
All-male panel	6%	0%	6%	0%	0%	6%
All-female panel	0%	26%	0%	25,5%	0%	26%
Predominantly male	21%	4%	16%	8%	2%	25%
Predominantly female	27%	16%	12%	24,5%	9%	43%
<i>Total</i>	<i>54%</i>	<i>46%</i>	<i>34%</i>	<i>58%</i>	<i>8%</i>	<i>100%</i>

Source: Database on appeal decisions in divorces with children, extracted from the JURICA dataset. N = 1999 decisions.

As for the other parties involved in the procedure, the population structure by gender is as follows (Table 2). Appeals are initiated slightly less often by mothers (45%) than fathers, and in a very high proportion (88%) fathers are potential debtors of child support (in the sense that "the mother asks the father to pay child support"), although not all of them will have to pay child support at the end of the procedure<sup>4</sup>. As expected, there are approximately as many girls (48.3%) as boys (48.6%) for which decisions will be made, while the children's sex is unknown for 3.1% of them.

**Table 2: by gender structure of the appellants**

<b>The appellant is the mother</b>	<b>45%</b>	<b>The appellant is the father</b>	<b>55%</b>
Creditor	37%	Creditor	4%
Debtor	8%	Debtor	51%

Source: Database on appeal decisions in divorces with children, extracted from the JURICA dataset. N = 1999 decisions.

The question of parental authority is rarely the ground of appeal (4% of cases in our sample). Conversely, as shown in table 3, child support is a ground of appeal in almost all appeal cases

<sup>4</sup> 10% of potential debtor fathers have no child support to pay at the end of the procedure.

(98%), and accommodation issues (custody and access, two decisions which are complementary) concern slightly less than one case in two (46%).

**Table 3: grounds of appeal structure by gender of appellant**

	<b>Child support only</b>	<b>Accommodation only</b>	<b>Child support and accommodation</b>
<b>The appellant is the mother creditor</b>	20%	1%	16%
<b>The appellant is the mother debtor</b>	2%	0%	6%
<b>The appellant is the father creditor</b>	2%	0%	2%
<b>The appellant is the father debtor</b>	30%	1%	20%
<b>Total</b>	54%	2%	44%

Source: Database on appeal decisions in divorces with children, extracted from the JURICA dataset. N = 1999 decisions.

### 3.2. *Outcome variables*

The general aim of the paper is to investigate whether gender matters in divorce cases involving children and, more specifically, whether women judges decide differently to men judges in child support decisions? In this regard, we selected two decision indicators. The first is the amount of child support. The second is a pro-mother decision indicator. This binary indicator is constructed as follows. We consider the decision to be favorable to the mother when the child support amount set by the judge is closer to the mother's offer than the father's. If the judge sets the amount of child support equal to the average of the two offers, we consider that the decision is not favorable to the mother. Finally, when the two offers are equal and the judge's decision differs from that amount, we consider that the decision is favorable to the mother when the child support order is greater than the parents' offer and the debtor is the father (the decision is favorable to the mother since she receives a higher award than her claim). To provide answers to our question we test whether (i) women judges set higher child support amounts than those set by men and (ii) women judges accept mothers' offers more often than male judges do?

### 3.3. *Descriptive results*

As a first step, using our two decision indicators, we studied whether there are significant differences in gender. As the decision is collegial, we successively studied the possible differences according to the gender of the president, the rapporteur and the panel. We also tested whether the judge is not indifferent to the gender of the appellant and the debtor. Consequently, we crossed the gender of the judges and gender of the appellants / debtors.

The descriptive analysis (Table 4) showed two results. First, women judges set higher child support amounts, on average, than those fixed by male judges. Next, the amounts they fix are

more often favorable to mothers than they are when it is a male judge who makes the decision. This is true regardless of the gender index (president, rapporteur and panel). In addition, the differences between women judges and men judges are not really challenged by the inclusion of the status of the litigant. For instance, the fact that it is the mother or the father who appeals does not change the fact that a female judge sets, on average, an amount of child support that is significantly higher than the amount fixed by a male judge. Sometimes the difference is not significant at the 10% threshold, mainly because the number of observations is small (when the mother is the debtor). However, a multivariate analysis is needed to verify if these gender differences withstand an analysis taking into account the context in which these decisions are made.

**Table 4: decisions by gender of the panel of judges**

	Average individual amount of child support (€/month) <sup>(1)</sup>	% of pro-mother decisions <sup>(2)</sup>
President is a man	153***	42***
President is a woman	192	47
President is a man, appeal by the mother	156**	32
President is a woman, appeal by the mother	177	35
President is a man, appeal by the father	150***	50***
President is a woman, appeal by the father	206	59
President is a man, the father is the debtor	162***	43***
President is a woman, the father is the debtor	210	48
President is a man, the mother is the debtor	57**	36
President is a woman, the mother is the debtor	74	42
Rapporteur is a man	153***	40***
Rapporteur is a woman	185	47
Rapporteur is a man, appeal by the mother	163	27***
Rapporteur is a woman, appeal by the mother	172	37
Rapporteur is a man, appeal by the father	146***	50*
Rapporteur is a woman, appeal by the father	195	55
Rapporteur is a man, the father is the debtor	162***	40***
Rapporteur is a woman, the father is the debtor	201	48
Rapporteur is a man, the mother is the debtor	63	31
Rapporteur is a woman, the mother is the debtor	68	40
Male or mixed panel	156***	43***
Panel of three women	212	49
Male or mixed panel, appeal by the mother	157***	31***
Panel of three women, appeal by the mother	189	40
Male or mixed panel, appeal by the father	156***	53*
Panel of three women, appeal by the father	234	58
Male or mixed panel, the father is the debtor	167***	43***
Panel of three women, the father is the debtor	234	52
Male or mixed panel, the mother is the debtor	56***	41
Panel of three women, the mother is the debtor	86	36

Source: Database on appeal decisions in divorces with children, extracted from the JURICA base. (1) N = 3587 children whose child support amount set by the judge is known. 271 children were excluded from the analysis for statistics on rapporteurs (when the latter are not identified). (2) N = 3111 children for whom pro-mother indicator can be calculated (no missing data). 130 children were excluded from the analysis for statistics on

rapporteurs. \*: Significant difference at the 10% threshold. \*\*: Significant difference at the 5% threshold. \*\*\*: Significant difference at the 1% threshold.

#### **4. Econometric results**

This section presents the estimation strategy (4.1), the covariates (4.2) and a comment on the main results (4.3)

##### ***4.1. Estimation strategy***

Regarding the two decision indicators, we investigated a set of three questions. The first one was general:

(i) do female judges set a different amount of child support to male judges; do they make pro-mother decisions more often than men (question 1 hereafter)?

But as it is possible for the judge's decision to depend on the appellant's gender, we introduced two complementary questions:

(ii) do female judges set a different amount of child support than men judges when the appellant is the mother/father; do women make pro-mother decisions more often than men when the appellant is the mother/father (question 2 hereafter)?

(iii) does a judge of a given gender (man or woman) set a different amount of child support depending on whether he/she investigates a case where the appellant is the father/the mother; does a judge of a given gender (man or woman) make a pro-mother decision more often if he/she investigates a case where the appellant is the father/the mother (question 3 hereafter)?

We used a Tobit regression to account for the fact that the amount of child support fixed by the judge at the end of procedure is sometimes (14%) equal to zero. Furthermore, we estimated OLS regressions with cluster-robust standard errors to take account of the fact that some children belong to the same set of siblings (the clusters are the families). When the coefficient was significant at least at the 10% threshold with one method and not with the other, we highlighted this difference to emphasize that the relationship is not robust to the type of model. To answer questions 2 and 3, we introduced interaction terms crossing judge gender and appellant gender (hereafter models 4-6 in table 5):

$$Y = \alpha + \beta_1(\text{Woman\_Judge}) + \beta_2(\text{Mother\_Appellant}) + \beta_3(\text{Woman\_Judge} * \text{Mother\_Appellant}) + \delta'X + \varepsilon$$

With Y: the amount of child support

$\beta_1$ : supplement of child support when the judge is a woman and the father is the appellant as compared to the amount of child support for same Xs when the judge is a man and the father is the appellant

$\beta_2$ : supplement of child support when the judge is a man and the mother is the appellant as compared to the amount of child support for same Xs when the judge is a man and the father is the appellant

$(\beta_1 + \beta_2 + \beta_3)$ : supplement of child support when the judge is a woman and the mother is the appellant as compared to the amount of child support for same Xs when the judge is a man and the father is the appellant

X: other covariates.

As for the specification of pro-mother decisions, we used Logit estimations with cluster-robust standard errors to take account of the fact that some children belong to the same set of siblings. We also introduced interaction terms crossing judge and appellant gender.

#### ***4.2. Covariates***

When the judge sets a child support amount, he/she has to take account of a number of different characteristics. The first factor to be considered is the offer of each party, since the judge shall fix the amount taking account of these proposals and can choose to differ from these offers only if he/she considers that they do not meet the child's interest. In our econometric specification, we used the average amount of the two proposals. Besides this factor, the usual determinants cited in studies with respect to the cost of the child or the child support guidelines were also used (Bassi and Barnow, 1993; Hourriez and Olier, 1997; Jeandidier *et al.*, 2012; Ray and Jeandidier, 2006; Renard, 1985...): the debtor's income,<sup>5</sup> the number of children (because the cost of a child decreases with the number of siblings due to economies of scale), the child's age (specific costs are related to the age of the child), the demand of either of the parties concerning specific charges related to the child to be taken into account,<sup>6</sup> an indicator of reliability of the information provided by the parties (when, for

---

<sup>5</sup> Income is equal to the sum of income from employment, replacement income, social benefits (excluding family allowances) and social minima. Because income from capital has a significant level of missing data, the specification retained only a dummy variable to signal the existence of such income. We excluded cases in which the debtor's income is unknown. The creditor's income was excluded from the analysis because subject to considerable missing data. An analysis incorporating this information (limited to cases without missing data) shows, however, that the amount of child support is not statistically related to the creditor's income.

<sup>6</sup> In our database, we do not know the amount of these charges, but only their existence (that is to say that one of the parties referred to in the proceedings). These charges are not registered specifically to a particular child of the family, but to all of the siblings. We chose to explicitly specify the charges authentically related to children

example, the judge wrote that such party has not been cooperative in providing evidence of incomes), the type of accommodation of the child (alternating custody, normal or reduced visiting rights) and an indicator of geographic proximity between the parents.

To these objective factors relating to the cost of the child, it is also appropriate to add elements of procedure that may influence the judge's decision. We retained the fact that the parties are or are not beneficiaries of legal aid and the fact that parents have benefited or not from a family mediation in first instance or on appeal. Then, the specification included indicators of (non)cooperation between the parties: an agreement on the accommodation arrangements (accommodation is not a ground of appeal), an agreement on the amount of child support, the fact that one or other of the parties lives with a new partner (source of potential conflict), the fact that in its judgment the judge has pointed out questionable or blameworthy educational behavior, and the fact that the judgement is a default judgment or a deemed adversarial judgment.

Finally, we introduced the gender of child to test the existence of any gender bias: does the child support amount set by the judge depend on whether the child is a boy or a girl (Ray and Jeandidier, 2006)? If this were the case, it would mean that the judge considers that the child's cost differs according to the child's gender, a hypothesis which, to our knowledge, has never been empirically highlighted in studies on the cost of children.

### **4.3. *Econometric results***

Assuming that judges with a particular responsibility (president or rapporteur) may specifically influence the decision, we focused on the gender of these particular judges. Then we conducted the analysis taking into account the gender structure of the panel. Our preliminary analyses show that the relevant distinction is to oppose panels of three women judges to panels including at least one man.<sup>7</sup>

Models 1-3 (*cf.* table 5)<sup>8</sup> provide answers to the first question. It shows that, *ceteris paribus*, panels chaired by a female judge and strictly female panels set child support amounts that are significantly higher than those set by panels chaired by male judges and mixed or male panels

---

(travel costs, specific costs for children, rent) or revealing a particular financial situation (indebtedness, compensatory allowance).

<sup>7</sup> With a specification using a set of dummies to distinguish all gender combinations in the three-judge panel, we found that only the panel of three women judges differed from the reference category. Results are not reported here but are available upon request.

<sup>8</sup> The main results are presented in Table 5, and detailed results are given in Annex A1.

respectively: between €14 and €25 higher per month,<sup>9</sup> which represents between 8% and 14% of the average amount of child support.<sup>10</sup> The same results were observed when we focused on pro-mother decisions (table A2 in annex). These results support the findings of the descriptive analysis. However, the influence of the gender of the judge rapporteur is quite mixed. On one hand, the results suggest that the amount of child support does not depend on the gender of the judge rapporteur, which is an interesting result since the judge rapporteur is the member who knows the case best in the panel. On the other hand, the influence of this variable becomes significant when we move to the pro-mother index.

To summarize, the amount of child support and the likelihood of a pro-mother decision are higher with a female president/rapporteur/panel (*versus* male); the difference is small and not significant in terms of the rapporteur's gender, but it is significant concerning the president's gender and even more so when studying the gender structure of the panel.

The fact that female judges fix higher child support awards can be related to the informational approach. Due to their possible motherhood experience, women judges would know that a child costs more than what men judges think, given their own possible fatherhood experience. Regarding the fact that female judges make pro-mother decisions more often, it could be interpreted as female judges upholding the mothers' claim (representational approach). Female judges may be expressing gender solidarity and may be sensitive to the fact that generally, in France, it is women who lose the most financially after a divorce (Jeandidier and Bourreau-Dubois, 2005; Fontaine and Stehlé, 2014). Finally, the fact that the magnitude of the gender effect is greater when female judges decide without men could be linked with the hypothesis of Boyd *et al.* (2010). Their hypothesis would lead this result to be interpreted as being that when there is at least one man in the panel, women alter their initial choices in light of the information provided by the men present in the panel. In other words, when there are no men in the panel, the impact of the higher estimation of child costs by women judges is maximal, because there is no contrary estimation to reduce their own.

---

<sup>9</sup> A similar effect, but of lower magnitude, had been already found by Bourreau-Dubois *et al.* (2006), by using a very different data set.

<sup>10</sup> In the sample, the average amount of child support is equal to €178 per month.

**Table 5: effect of gender of judges on the child support amount estimated by Tobit regression**

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
President is a woman	14***	/	/	24***	/	/	-9	/	/
Rapporteur is a woman	/	6	/	/	9	/	/	-28	/
Panel of three women	/	/	25***	/	/	30***	/	/	-4
The mother is the appellant	-25***	-27***	-25***	-14**	-23***	-23***	19	12	12
President woman * appellant woman	/	/	/	-23***	/	/	-9	/	/
Rapporteur woman * appellant woman	/	/	/	/	-6	/	/	-10	/
Panel woman * appellant woman	/	/	/	/	/	-9	/	/	4
The mother is the creditor	/	/	/	/	/	/	36	18	45***
President woman * creditor woman	/	/	/	/	/	/	36	/	/
Rapporteur woman * creditor woman	/	/	/	/	/	/	/	39	/
Panel woman * creditor woman	/	/	/	/	/	/	/	/	36
Creditor woman * Appellant woman	/	/	/	/	/	/	-33	-37	-36*
President woman * Creditor woman * Appellant woman	/	/	/	/	/	/	-13	/	/
Rapporteur woman * Creditor woman * Appellant woman	/	/	/	/	/	/	/	9	/
Panel woman * Creditor woman * Appellant woman	/	/	/	/	/	/	/	/	-11
<i>Difference A</i>	/	/	/	1	3	21***	/	/	/
<i>Difference B</i>	/	/	/	-37***	-29***	-31***	/	/	/
<i>Difference C</i>	/	/	/	-13**	-20**	-2	/	/	/
<i>Difference D</i>	/	/	/	/	/	/	-63***	-55***	-64***
<i>Difference E</i>	/	/	/	/	/	/	35*	30	50**(#)
<i>Difference F</i>	/	/	/	/	/	/	-18	-7	-32***
<i>Difference G</i>	/	/	/	/	/	/	21	-7	20
N	2912	2660	2912	2912	2660	2912	2912	2660	2912
LL	-15715	-14379	-15705	-15710	-14379	-15704	-15700	-14317	-15693
AIC	31544	28873	31524	31537	28874	31525	31524	28867	31511
Schwarz Criterion	31884	29208	31864	31884	29216	31871	31894	29232	31881

Source: Data-base on appeal decisions in divorces with children, extracted from the JURICA base. The specification includes the same covariates as in the Table A1.

\*: Significant at the 10% threshold. \*\*: Significant at the 5% threshold. \*\*\*: Significant at the 1% threshold.

(#): the coefficient is not significant at the 10% threshold when we use an OLS regression with cluster-robust standard error to take into account the fact that some children belong to the same set of siblings.

Difference A calculates, in cases where the mother is the appellant, the difference in amount of child support "with a female president/rapporteur/panel – with a male president/rapporteur/panel".

Difference B calculates, for a female president/rapporteur/panel, the difference in amount of child support "with a mother as appellant – with a father as appellant".

Difference C calculates the difference of amount of child support "with a female president/rapporteur/panel facing an appellant Mother – with a male president/rapporteur/panel facing an appellant Father".

Difference D calculates, for a female president/rapporteur/panel, the difference in amount of child support "with a mother as appellant and debtor – with a father as appellant and debtor".

Difference E calculates, for a female president/rapporteur/panel, the difference in amount of child support "with a mother as appellant and creditor – with a father as appellant and creditor".

Difference F calculates, for a male president/rapporteur/panel, the difference in amount of child support "with a mother as appellant and debtor – with a father as appellant and debtor".

Difference G calculates, for a male president/rapporteur/panel, the difference in amount of child support "with a mother as appellant and creditor – with a father as appellant and creditor".

As for the second question, the results are mixed (models 4-6). On one hand, when the father is the appellant, we observe that a panel chaired by a woman sets child support that is €24 per month higher – a statistically significant difference at the 1% threshold – than child support fixed by a panel chaired by a man for the same type of case. The difference is also significant for panels made up of three women (+€30). Once more, however, the difference is not significant when we analyze the gender of the judge rapporteur. On the other hand, when the mother is the appellant, the president's gender does not matter, panels chaired by a man or a woman setting similar child support amounts.<sup>11</sup> Nevertheless, in the same case, panels of three women decide significantly higher child support amounts than those fixed by the other types of panels (mixed or male).

If we turn now to the third question (models 4-6), we observe that when the appellant is the mother, a panel chaired by a man sets child support that is €14 per month lower – a statistically significant difference, but only at the 5% threshold – than the amount fixed when, for the same case, the appellant is the father. The fact that the amount is lower when the mother is the appellant (as compared to cases appealed by the father) is also observed to be statistically significant for panels with a male rapporteur and for mixed or male panels (–€23). The same conclusion can be made about panels chaired by a woman (and panels with a female rapporteur or with three women): child support amounts are set at a higher level when the father is the appellant compared to the mother (by –€29 to –€37).<sup>12</sup>

Analysis of the pro-mother indicator (tables A2 and A3 in annex) leads to relatively similar results: first, we observe that the probability of making a pro-mother decision is significantly higher when it is the father who is the appellant (*versus* the mother), irrespective of the gender of the president / rapporteur / panel. Secondly, whether the appellant is the father or the mother, we observe that the significant difference in this probability of taking a pro-mother decision depends on the gender of the judges: the probability is significantly higher for panels chaired by women and when the rapporteur is a woman or the panel is made up of three women.

To summarize, both the amount of child support and the probability of a pro-mother decision are higher when the appellant is the father (*versus* the mother), irrespective of the gender of

---

<sup>11</sup> In table 5, this result corresponds to “Difference A” =  $\beta_1 + \beta_3$ .

<sup>12</sup> In table 5, this result corresponds to “Difference B” =  $\beta_2 + \beta_3$ .

the judge, and this gap is more pronounced when the judges – president / rapporteur / panel – are women.

The previous result raises the question of the relevance of comparing cases where the appellant is the father with cases where the appellant is the mother (question 3) as, in a very high proportion (88%), mothers are creditors and therefore when they appeal it is very likely in order to get a child support increase, while fathers, usually debtors, will ask for a child support reduction. It is therefore useful to extend the analysis by adding to models 1-3, as a new explanatory variable, the litigant status (creditor or debtor) and its interactions with the judge's gender, with the litigant's gender and with these two variables taken together.<sup>13</sup>

The results of this further analysis are presented in Table 5 (models 7 to 9). First, when we compare, all things being equal, cases where the father is the appellant and debtor with cases where the mother is the appellant and debtor,<sup>14</sup> we see that the amount of child support set by the judge is higher when the father is the appellant and debtor.<sup>15</sup> We can therefore conclude that regardless of the kind of judge indicator used (president, rapporteur, panel), the decisions tend to be more favorable to mothers: the amount of child support is higher when it is the father who has to pay (and consequently when it is the mother who receives the child support) than when it is the mother who has to pay. It is worth noting that this difference of treatment between mothers and fathers is greater when the panel is chaired by a woman, when the rapporteur is a woman or when the panel is exclusively made up of women judges (€63, €55 and €64 respectively) compared to decisions by male judges (€18, €7, €32). Secondly, when we compare cases where the father is the appellant and creditor to cases where the mother is the appellant and creditor,<sup>16</sup> we observe symmetrically similar differences: child support is higher when the cases are appealed by a creditor mother compared to cases where the creditor is the father (and whose former spouse is called upon to pay lower child support). It should be noted that for this latter comparison, the interpretation is more fragile due to low numbers of cases (< 50) in one of the two compared subgroups (fathers who are appellants and creditors). Indeed, the differences G are not statistically significant, but we cannot say whether this non-

---

<sup>13</sup> The model is presented in annex 2.

<sup>14</sup> Cf. Table 5, “D difference” when the judge is a woman =  $\beta_2 + \beta_3 - \beta_4 - \beta_5$ ; “F difference” when the judge is a man =  $\beta_2 - \beta_4$ .

<sup>15</sup> The difference is very significant when the president/rapporteur is a woman or when the panel is composed of three women. Although the difference is of the same sign, it is not significant when the chairman or rapporteur is a man; however, the difference is significant for cases judged by mixed or all-male panels.

<sup>16</sup> Cf. Table 5, “Difference E” when the judge is a woman =  $\beta_2 + \beta_3 + \beta_4 + \beta_5 + \beta_6 + \beta_7$ ; “Difference G” when the judge is a man =  $\beta_2 + \beta_4 + \beta_6$ .

significance comes from the low power of the test (due to the low number of observations) or from a real lack of any difference.

The first set of results reveals new information and confirms some previous results. First, it seems that judges do not treat the appellant debtor equally according to that debtor's gender: they are more benevolent to female debtors by making them pay less than male debtors. Then, the fact that this difference in treatment is more pronounced when the judge is a woman must be associated with the representational approach. It would seem, once again, that female judges tend to uphold divorced women, since their decisions ease the burden on female debtors and increase the child support paid by male debtors to their former wives. As for the second set of results, it would seem that, unlike men, women judges do seem to treat appellant creditors differently according to the creditor's gender: they are more generous with female creditors by fixing higher child support awards when the creditor is a woman than a man.<sup>17</sup> Nevertheless, we must remain cautious on this interpretation, given the lack of observations for the subsample made of the fathers who are appellants and creditors.

---

<sup>17</sup> These two sets of results are consistent with the results presented in 4.2.1 which show that the probability of taking a pro-mother decision is significantly higher when the judge is a woman.

## Conclusion

This article shows that in a civil law system, like the French one, the gender of the judge does seem to matter in divorce cases involving children. We found that the gender impact is likely to manifest itself on two levels. First, our results show that female and male judges do not make the same decisions. To be more precise, female judges are more generous, fixing higher amounts of child support than men (between +8% and +17%). Secondly, we found that female judges support mothers more than fathers in that, comparatively to male judges, they make pro-mother decisions more often, regardless of whether the mothers are debtors or creditors. Our results showed that, in most of our estimates, the gender of the judge rapporteur does not seem to matter, while the differences by gender of the president are almost always statistically significant; the role of the president, according to their gender, would therefore seem to be quite decisive in collegial decisions. Finally, we noted that gender differences are stronger when considering the gender composition of panels, rather than the genders of presidents or rapporteurs: judgments of panels of three women judges are more favorable to mothers than those delivered by mixed or all-male panels.

Our results question the fairness of legal proceedings in different ways. First, our findings challenge the horizontal equity between families: all things being equal, child support is different according to the gender of the judge. Secondly, our findings challenge the horizontal equity between parents: all things being equal, the amount of child support is higher when the debtor is the father than when it is the mother, regardless of whether the judge is a woman or a man. This latter challenge reveals that French judges' decisions probably contain a certain value judgement, which leads them to make a difference between debtors according to their gender. The legal system could try to reverse this tendency by implementing specific training when judges attend the ENM. As for the first challenge, it would be inappropriate, according to us, to deduce that the French Ministry of Justice should invite female judges to align their decisions on those of their male counterparts. The observed differences raise the question of what the "right" decision should be in the interest of the child. In France, the current child support awards set by the judges are relatively low (€178 on average in our study, which covers the 2006-2010 period)<sup>18</sup> when compared to estimations of the cost of a child. For instance, according to a recent report by the ONPES (2014), quoted in the last report of the

---

<sup>18</sup> According to a recent study (Carrasco and Dufour, 2015), in 2012, the average amount of child support was of €170.

*Haut Conseil de la Famille* (2015), the cost of a child living in a single-parent family varies between €650 and €750 per month for a child under the age of 14, and between €750 and €850 per month for a child over the age of 14. Although this cost must be shared between the parents, our results seem to suggest that amounts of child support fixed by female judges are a little closer to the actual cost of a child than those set by male judges. The introduction of an indicative child support guideline since 2010 in France should go some way toward solving the problem of horizontal equity between families and parents. However, what is less sure is whether it will solve the problem of the low amounts of child support.

Acknowledgments: the authors would like to express their gratitude to Catherine Vanel. She created happiness around her and the authors owe her a great deal.

## References

- Bassi L. J., Barnow B. S. 1993. "Expenditures on Children and Child Support Guidelines", 12(3) *Journal of Policy Analysis and Management* 478-497.
- Bentata P., Espinosa R., Hiriart Y. 2015. "Biased judges or selection bias? What do we observe from Supreme Courts' decisions?" paper presented at the annual Conference of *Association Française de Sciences Economiques (AFSE)* Rennes June 2015.
- Bessière C., Mille M. 2013. "Le juge est (souvent) une femme. Conceptions du métier et pratiques des magistrates et magistrats aux Affaires familiales" 55(3) *Sociologie du travail* 341-368.
- Boigeol A. 2013. "Feminisation of the French 'magistrature': gender and judging in a feminised context", in *Gender and judging*, U. Schultz and G. Shaw ed., Portland Hart Publishing 125-143.
- Bonneau C., Rice H.M. 2009. "Impartial Judges? Race, Institutional Context, and US State Supreme Courts" 9(4) *State Politics and Policy Quarterly* 381-403.
- Bourreau-Dubois C., Doriat-Duban M., Ray J.-C. 2012. "Child support order: how do judges decide without guidelines? Evidence from France" *European Journal of Law and Economics*, (online publication 28 November 2012, DOI10.1007/s10657-012-9368-6) 38(3), 2014 431-452,
- Boyd C., Epstein L., Martin A. D. 2010. "Untangling the Causal Effects of Sex on Judging" 54(2) *American Journal of Political Science* 389-411.
- Carrasco V., Dufour C. 2015. "Les décisions des juges concernant les enfants de parents séparés ont fortement évolué dans les années 2000" 132 *Infostat Justice* janvier 2015
- Chaussebourg L., Baux D. 2007. "L'exercice de l'autorité parentale après le divorce ou la séparation de parents non mariés », Sous-direction de la statistique des études et de la documentation, Bureau des études et des indicateurs d'activité, 72 pages.
- Collins P. M., Manning K. L., Carp R. A. 2010. "Gender, Critical Mass, and Judicial Decision Making" 32 (2) *Law and Policy* 260-281.

Collins T., Moyer L. 2008. "Gender, Race and Intersectionality on the Federal Appellate Bench", 61(2) *Political Research Quarterly* 219-227.

Curry B. 2009. "Expertise, Experience and Ideology on Specialized Courts: The Case of the Court of Appeals for the Federal Circuits" 43(4) *Law and Society Review* 839-864.

Dijksterhuis B. 2013. "Women Judges in the Netherlands", in *Gender and judging*, U. Schultz and G. Shaw ed., Portland Hart Publishing 267-282.

Feenan D. 2009. "Editorial Introduction: Women and Judging" 17 *Feminist Legal Studies* 1-9.

Fontaine M., Stehlé J. 2014. "Les parents séparés d'enfants mineurs : quel niveau de vie après une rupture conjugale ?" 117 *Politiques sociales et familiales* 80-86.

Fuszara M. 2003. "Women Lawyers in Poland under the Impact of Post-1989 Transformation", in *Women in the World's Legal Professions*, U. Schultz and G. Shaw ed. (2003), Oxford, Hart Publishing, 371.

Gazak-Ayal O., Sulitzeanu-Kenan R. 2014. "Let My People Go: Ethnic In-Group Bias in Judicial Decisions – Evidence from a Randomized Natural Experiment" 7(3) *Journal of Empirical Legal Studies* 403-428.

Haut Conseil de la Famille. 2015. *Le coût de l'enfant*. Rapport et propositions adoptés par consensus par le HCF lors de sa séance du 9 juillet 2015, 116 p., <http://www.hcf-famille.fr/spip.php?rubrique11>

Hourriez J.-M., Olier L. 1997. "Niveau de vie et taille du ménage : estimations d'une échelle d'équivalence" 308-309-310 *Économie et Statistique* 65-94.

Ichino A., Polo M., Rettore E. 2003. "Are Judges Biased by Labor Market Conditions?" 47(5) *European Economic Review* 913-944.

Jeandidier B., Bourreau-Dubois C. 2005. "Les conséquences microéconomiques de la désunion" In Joël M.-E., Wittwer J., *Economie du vieillissement. Age et protection sociale* », Ed. L'Harmattan, tome 2 335-351.

Jeandidier B., Ray J.-C. 2006. "Pensions alimentaires pour enfants lors du divorce : les juges appliquent-ils implicitement un calcul fondé sur le coût de l'enfant ?" 84 *Recherches et Prévisions* 5-18.

Jeandidier B., Bourreau-Dubois C., Sayn I. 2012. "Séparation des parents et contribution à l'entretien et l'éducation des enfants. Evaluation du barème pour la fixation de la pension alimentaire" 107 *Politiques Sociales et Familiales* 23-39.

Junqueira E.B. 2003. "Women in the Judiciary: a perspective from Brazil", in *Women in the World's Legal Professions*, U. Schultz and G. Shaw ed. (2003), Oxford, Hart Publishing 437-50

Kohen B. 2008. "Family Judges in the City of Buenos Aires: a view from within" 15 (1-2) *International Journal of Legal Profession* 111-122.

Kulik C.T., Perry E.L., Pepper M.B. 2003. "Here Comes the Judge: The Influence of Judge Personal Characteristics on Federal Sexual Harassment Case Outcomes" 27(1) *Law and Human Behavior* 69-86.

- Marinescu I. 2011. "Are Judges Sensitive to Economic Conditions? Evidence from UK Employment Tribunals" 64(4) *Industrial and Labor Relations Review* 673-698.
- Martin E., Pyle B. 2005. "State High Courts and Divorce : The Impact of Judicial Gender " 36(4) *University of Toledo Law Review* 923-47.
- ONPES. 2015. *Les budgets de référence : une méthode d'évaluation des besoins pour une participation effective à la vie sociale*, 9<sup>e</sup> rapport 2015.
- Renard R. 1985. *Le coût de l'enfant. Approches théoriques, méthodologiques, empiriques*, Ministère de la Communauté française, Direction générale des affaires sociales, Bruxelles, 251 p.
- Ruiz G.M. 2014. "Understanding the Pro-plaintiff bias in Consumer Protection Legal Processes " 37 *Journal of Consumer Policy* 113-141.
- Schultz U., Shaw G. 2013. *Gender and Judging*, Portland, Hart Publishing, Oñati international Series in law and Society, 606 pages.
- Sheurer K.F. 2014. "Gender and Voting Decisions in the US Court of Appeals: testing Critical Mass Theory" 35 *Journal of Women Politics and Policy* 31-54.
- Siegel N. S. 1999. "Sen and the Hart of Jurisprudence: A Critique of the Economic Analysis of Judicial Behavior " 87 *California Law Review* 1581-1608.
- Songer D.R. , Crews-Meyer K. 2000. "Does Judge Gender Matter? Decision Making in State Supreme Courts" 81(3) *Social Science Quarterly* 750-762.
- Tiede L., Carp R., Manning K.L. 2010. "Judicial Attributes and Sentencing-Deviation Cases: Do Sex, Race, and Politics Matter?" 31(3) *The Justice System Journal* 249-272.
- Steffensmeier D., Herbert C. 1999. "Women and Men Policymakers: Does the Judge's Gender Affect the Sentencing of Criminal Defendants?" 77(3) *Social Forces* 1163-1196.

## Annex 1

**Table A1: estimation of child support amount by Tobit regression**

<b>Dependent : monthly child support amount</b>	<b>Model 1</b>
President is a Woman	24,42***
Appellant is the mother	-14,04**
President Woman * Appellant Mother	-23,26***
<i>Average of the propositions of the parties:</i>	
€0	-93,35***
€1-50	-56,72***
€51-100	Ref.
€101-150	32,52***
€151-200	68,67***
€201-300	116,16***
€301-400	178,10***
€401 and more	328,97***
Income of debtor / 100	2,10***
The debtor have income from capital	18,22***
The judge questioned the debtor's income	24,29***
The judge questioned the creditor's income	-8,90
<i>The debtor declares charges of...</i>	
Main housing rent	-3,90
Obligation of assistance to former spouse	7,62
Specific expenses for children	53,12***
Children transport costs	-35,56***
Excessive debt	-19,10*
Miscellaneous expenses not specific to children	-1,43
<i>The creditor declares charges of...</i>	
Main housing rent	-9,13**
Obligation of assistance to former spouse	-48,48**
Specific expenses for children	8,88*(#)
Excessive debt	-12,30
Miscellaneous expenses not specific to children	1,28
<i>Parents live:</i>	
In the same department	Ref.
In neighboring departments	18,45***(#)
In non-neighboring departments	17,56***
Number of children	-2,45
The child is a girl	-1,04
<i>Age of the child:</i>	
0 to 5 years	-12,56**
6 to 10 years	Ref.
11 to 14 years	-3,89
15 to 17 years	-1,11
> 17 years	-15,04***(#)
<i>Accommodation of the child:</i>	
with a reduced right of visit for the second parent	11,02*(#)
with normal right of visit for the second parent	Ref.
shared custody	-52,30***
According child support, the decision is different among the siblings	-13,89**
<i>Legal aid:</i>	
No legal aid (LA)	Ref.
Partial LA for both parents	-12,20
Total LA for both parents	-32,50***

Partial LA for the debtor and total LA for the creditor	-16,14*
Total LA for the debtor and the partial LA for the creditor	-0,86
Partial LA only for the debtor	-5,39
Partial LA only for the creditor	-7,76
Total LA only for the debtor	-33,56***
Total LA only for the creditor	-14,93***
Family mediation in courts of appeal	-54,07**
Family mediation in the first instance	34,69***(#)
Accommodation of children is not a ground of appeal	0,24
The parents agree on the amount of the child support	-21,04**(#)
The debtor lives with a new partner	-11,71***
The creditor lives with a new partner	-11,96**(#)
The judge emphasized negative parenting of the debtor	38,30***
The judge emphasized negative parenting of the creditor	-6,42
The judge emphasizes positive parenting of the debtor	-87,57**(#)
The judge emphasizes positive parenting of the creditor	27,40**(#)
<i>Judgement:</i>	
Normal	Ref.
By default	51,56***
Deemed adversarial	36,32**
<i>Intercept</i>	85,57***
<i>Sigma</i>	101,04***
<hr/>	
N	2912
LL	-15715
AIC	31544
Schwarz Criterion	31884
<hr/>	

Source: Data-base on appeal decisions in divorces with children, extracted from the JURICA base.

\*: Significant at the 10% threshold. \*\*: Significant at the 5% threshold. \*\*\*: Significant at the 1% threshold. (#): the coefficient is not significant at the 10% threshold when we use an OLS regression with cluster-robust standard error to take into account the fact that some children belong to the same set of siblings.

**Table A2: effect of gender of judges on pro-mother decisions estimated by Logit regression**

	(1')	(2')	(3')	(4')	(5')	(6')
President is a woman	0,40***	/	/	0,58***	/	/
Rapporteur is a woman	/	0,53***	/	/	0,41**	/
Panel of three women	/	/	0,56***	/	/	0,51**
The mother is the appellant	-1,01***	-0,99***	-1,02***	-0,83***	-1,19***	-1,05***
President W * appellant W	/	/	/	-0,39	/	/
Rapporteur W * appellant W	/	/	/	/	0,29	/
Panel W * appellant W	/	/	/	/	/	0,11
The mother is the creditor	/	/	/	/	/	/
President W * creditor W	/	/	/	/	/	/
Rapporteur W * creditor W	/	/	/	/	/	/
Panel W * creditor W	/	/	/	/	/	/
<i>Difference A</i>	/	/	/	0,99***	0,70***	0,62***
<i>Difference B</i>	/	/	/	-1,22***	-0,91***	-0,94***
<i>Difference C</i>	/	/	/	-0,65***	-0,49**	-0,42*
N	2469	2273	2469	2469	2273	2469

Source: Data-base on appeal decisions in divorces with children, extracted from the JURICA base. The specification includes the same covariates as in Table A3. Estimations with cluster-robust standard error to take into account the fact that some children belong to the same set of siblings. \*: Significant at the 10% threshold. \*\*: Significant at the 5% threshold. \*\*\*: Significant at the 1% threshold. Difference A calculates, in cases where the mother is the appellant, the difference in the estimated coefficient "female with a president/rapporteur/panel – with a male president/rapporteur/panel". Difference B calculates, for a female president/rapporteur/panel, the difference in the estimated coefficient "with a mother as appellant – with a father as appellant". Difference C calculates the difference in the estimated coefficient "female with a president/rapporteur/panel facing an appellant mother – with a male president/rapporteur/panel facing an appellant father".

**Table A3: pro-mother decision estimated by Logit regression**

	Model 1'
President is a woman	0,57***
Appellant is the mother	-0,83***
President woman * Appellant mother	-0,39
<i>Average of the propositions of the parties:</i>	
€0	1,14
€1-50	-0,33
€51-100	Ref.
€101-150	-0,81***
€151-200	-1,20***
€201-300	-1,20***
€301-400	-1,92***
€401 and more	-2,43***
Income of the mother / 100	-0,00
The mother have income from capital	0,24
Income of the father / 100	0,00
The father have income from capital	0,30
The judge questioned the mother's income	-0,06
The judge questioned the father's income	0,31*
<i>The mother declares charges of...</i>	
Main housing rent	0,05
Obligation of assistance to former spouse	0,07
Specific expenses for children	0,37**
Children transport costs	-0,80
Excessive debt	-0,60
Miscellaneous expenses not specific to children	-0,16

<i>The father declares charges of...</i>	
Main housing rent	-0,12
Obligation of assistance to former spouse	-0,13
Specific expenses for children	0,44*
Children transport costs	-0,72***
Excessive debt	-0,58
Miscellaneous expenses not specific to children	0,10
<i>Parents live:</i>	
In the same department	Ref.
In neighboring departments	0,34
In non-neighboring departments	-0,04
Number of children	0,06
The child is a girl	0,01
<i>Age of the child:</i>	
0 to 5 years	-0,08
6 to 10 years	Ref.
11 to 14 years	0,34*
15 to 17 years	0,10
> 17 years	-0,34
<i>Accommodation of the child:</i>	
with a reduced right of visit for the second parent	-0,25
with normal right of visit for the second parent	Ref.
shared custody	-0,66**
According child support, the decision is different among the siblings	-0,27
<i>Legal aid:</i>	
No legal aid (LA)	Ref.
Partial LA for both parents	0,18
Total LA for both parents	-0,83***
Partial LA for the father and total LA for the mother	0,32
Total LA for the father and the partial LA for the mother	-0,25
Partial LA only for the mother	0,21
Total LA only for the father	0,26
Total LA only for the mother	-0,34*
Family mediation in courts of appeal	0,07
Family mediation in the first instance	0,03
Accommodation of children is not a ground of appeal	0,01
The parents agree on the amount of the child support	-4,38***
The mother lives with a new partner	-0,38**
The father lives with a new partner	-0,10
The judge emphasized negative parenting of the mother	-2,23*
The judge emphasized negative parenting of the father	0,38
The judge emphasizes positive parenting of the mother	0,37
The judge emphasizes positive parenting of the father	-1,43
<i>Judgement:</i>	
Normal	Ref.
By default	2,11***
Deemed adversarial	2,10
<i>Intercept</i>	<i>1,12***</i>
N	2469
-2LL	2778
AIC	2896
Schwarz Criterion	3239

Source: Data-base on appeal decisions in divorces with children, extracted from the JURICA base. Estimations with cluster-robust standard error to take into account the fact that some children belong to the same set of siblings.

\*: Significant at the 10% threshold. \*\*: Significant at the 5% threshold. \*\*\*: Significant at the 1% threshold.

## Annex 2

### The econometric specification for models 7 to 9

$$Y = \alpha + \beta_1 (\text{Woman\_Judge}) + \beta_2 (\text{Mother\_Appellant}) + \beta_3 (\text{Woman\_Judge} * \text{Mother\_Appellant}) + \beta_4 (\text{Mother\_Creditor}) + \beta_5 (\text{Woman\_Judge} * \text{Mother\_Creditor}) + \beta_6 (\text{Mother\_Appellant} * \text{Mother\_Creditor}) + \beta_7 (\text{Woman\_Judge} * \text{Mother\_Appellant} * \text{Mother\_Creditor}) + \delta' X + \varepsilon$$

With Y: the amount of child support

$\beta_2$ : supplement<sup>19</sup> of child support when the judge is a man and the mother is the appellant and debtor

$\beta_4$ : supplement of child support when the judge is a man and the father is the appellant and debtor

$(\beta_2 + \beta_4 + \beta_6)$ : supplement of child support when the judge is a man and the mother is the appellant and creditor

$\beta_1$ : supplement of child support when the judge is a woman and the father is the appellant and creditor

$(\beta_1 + \beta_4 + \beta_5)$ : supplement of child support when the judge is a woman and the father is the appellant and debtor

$(\beta_1 + \beta_2 + \beta_3)$ : supplement of child support when the judge is a woman and the mother is the appellant and debtor

$(\beta_1 + \beta_2 + \beta_3 + \beta_4 + \beta_5 + \beta_6 + \beta_7)$ : supplement of child support when the judge is a woman and the mother is the appellant and creditor

X: other covariates.

---

<sup>19</sup> With this specification, “supplement” means “as compared to the amount of child support for same Xs when the judge is a man and the father is the appellant and creditor”.