Institut des Politiques Publiques

FRENCH EMPLOYMENT TRIBUNALS: CAN THE DISPARITY OF THEIR DECISIONS BE EXPLAINED?

IPP Policy Brief

n°29

November 2017

Thomas Breda,
Esther Chevrot-Bianco,
Claudine Desrieux and
Romain Espinosa

www.ipp.eu

Summary

The uncertainty about the outcomes of proceedings before France's employment tribunals (*"les conseils de prud'hommes"*, also known as *"les prud'hommes"*) is often pointed to as a possible damper on hiring of new staff. This uncertainty would appear to be generated in part by the fact that similar cases brought before them seem to be judged differently from one time to another or from one tribunal to another. After recalling the historic aim of the *"institution prud'homale"*, the way it works, and recent changes to it, this policy brief shows that the decisions rendered by the French employment tribunals do indeed vary strongly from one tribunal to another. However, the source of this variability remains in doubt: it might equally well reflect the arbitrary nature of *"prud'homale"* justice as the fact that the cases judged by the various tribunals are of different natures and of different seriousness. Finally, this policy brief uses the work of Desrieux and Espinosa to show that union membership of the judges elected by employees does not influence the decisions rendered by the French employment tribunals. These findings make it possible to dismiss a possible source of partiality in the justice rendered by the various tribunals. ■

- *"Les prud'hommes"* are taking increasingly long to hand down justice, in particular because they are managing less and less to reconcile the parties through conciliation, and are thus increasingly having to use judgments.
- The length of proceedings, use of judgments, and the decisions rendered vary very strongly from one tribunal to another. However, uncertainty remains about the causes of these variations.
- Union membership of the judges elected by employees does not influence the decisions rendered by the various different tribunals. In particular, the tribunals in which the unions that are considered to be more confrontational are the best represented do not render more decisions favourable to employees.

The Institut des Politiques Publiques (IPP) has been developed through a scientific partnership between the Paris School of Economics (PSE) and the Centre for Research in Economics and Statistics (CREST). IPP's aim is to promote quantitative analysis and evaluation of public policy using cutting-edge research methods in economics

CREST
http://crest.science

PARIS SCHOOL OF ECONOMICS
ECOLE D'ECONOMIE DE PARIS
www.parisschoolofeconomics.eu

The length of proceedings, use of judgments, and the decisions rendered vary very strongly from one tribunal to another. However, uncertainty remains about the causes of these variations. Union membership of the judges elected by employees does not influence the decisions rendered by the various different tribunals. In particular, the tribunals in which the unions that are considered to be more confrontational are the best represented do not render more decisions favourable to employees.

In an economic context in which the new government is pushing ahead to complete a reform designed to make the labour market more flexible, the issue of how dissuasive the French employment tribunal system is to recruitment of workers on indefinite-term contracts constitutes an important aspect of the debate. In particular, it is the uncertainty about the outcomes of the proceedings that is pointed to as a possible damper on hiring new staff: for a good many observers, the decisions rendered by the employment tribunals are largely random, or even partial, and therefore give rise to unnecessary risks coming with terminating an employment contract[1].

This policy brief attempts to shed light on these supposed dysfunctional aspects by using firstly the statistics per tribunal published by the French Justice Ministry and secondly the findings of recent research. In a first part, we document the recent lengthening of the time it takes for the employment tribunals to process cases, and we discuss various possible explanations for this change that often has an accusing finger pointed at it. We then describe the variability of the decisions rendered by 210 different French employment tribunals during the period from 2004-2014. While this analysis highlights strong disparities between certain tribunals, it does not make it possible to draw definitive conclusions about their causes, which can be related as much to differences between the cases brought before the various tribunals as to variations in the ways the tribunals hand down justice. In an attempt to circumvent this problem, we examine whether union membership of the judges elected by employees influences the decisions rendered by the various tribunals and we conclude that it does not. This analysis therefore makes it possible to dismiss a possible source of partiality in the justice rendered by the various tribunals.

"LES PRUD'HOMMES": AN INSTITUTION FOR CONCILIATION BETWEEN EMPLOYERS AND EMPLOYEES?

Inspired by the "paternalistic" philosophy of the 19th Century, the *"institution prud'homale"* was originally "entrusted with the task of watching over the industrious family", not by exercising authority, but rather by settling conflicts through dialogue and understanding. The institution drew its novelty from the fact that it proposed a peer system of justice, in a context of mistrust towards the judicial authorities[2]. The employment tribunal judges were elected[3] from among professionals from the same family of trades, who were aware of the economic realities and therefore more able to reach conciliation between the parties. During the 19th Century and the early part of the 20th Century, the vast majority of cases were thus resolved by conciliation[4] (see Box 1 and Figure 1). Today, the conciliation mission remains, in theory, the primary objective of the tribunal judges. And yet conciliation is achieved only in 9% of the cases heard. The non-conciliated cases are abandoned, joined to other cases, or, for more than half of them, referred to a judgment bench (*bureau de jugement*), which is a much more cumbersome procedure that lengthens the lead time before a decision is taken. Since the 1970s, various authors have also pointed out that there has been a slippage in the *"institution prud'homale"*: the place for discussion is gradually being transformed into a "place of trial, in the judicial sense of the term"[5]. Questions are therefore being asked about the French employment tribunals' capacity to settle conflicts between employers and employees in the contemporary working world. They are criticised by the judicial authorities for their lack of efficiency and the lengths of their proceedings, and by the economic community for acting as a damper to recruitment of new staff.

BOX 1 - WORKINGS OF THE *"CONSEILS DE PRUD'HOMMES"*

The cases brought before the French employment tribunals (*"conseils de prud'hommes"*) may be brought by an employee (the vast majority of cases) or by an employer to be heard in "on merits" (*"au fond"*) proceedings, as are 80% of cases, or else in "summary" or "interim" (*"en référé"*) proceedings, as are 20% (see *Figure 1*). Claims that are urgent, and that can be resolved rapidly, are likely to be heard in "summary" proceedings. The decision, known as an *"ordonnance"* is rendered by one judge from the employer college and by one judge from the employee college.
The claims heard "on merits" go through up to three stages: firstly they are presented to the conciliation bench (*"bureau de conciliation"*), they then go before the judgment bench (*"bureau de jugement"*) if conciliation fails and, finally they go before an adjudication hearing (*"audience de départage"*) if the judgment bench has been unable to render a unanimous verdict (*Figure 1*).
The conciliation bench is composed of two judges, one elected by the employer college and the other by the employee college. Their objective is to find an agreement between the parties, such an agreement generally making provision for lump-sum compensation to be paid to the employee. From 2004 to 2014, on average, 9 cases out of 100 were settled through conciliation. If conciliation

(1) See, for example, the opinion column *"Le projet de loi El Khomri représente une avancée pour les plus fragiles"* ("the El Khomri (labour law reform) bill represents progress for the most vulnerable" published by a group of economists) (*Le Monde,* 4 March 2016).

(2) C Lemercier, *"Juges du commerce et conseillers prud'hommes face à l'ordre judiciaire (1800- 1880). La constitution de frontières judiciaires."*

(3) Since an order of 31 March 2016, employment tribunal judges are no longer elected in France, but rather they are appointed by a joint decision of the Labour Minister and of the Justice Minister for four-year terms. Conversely, over the period considered in this policy brief, employment tribunal judges were elected by employers and employees (through direct votes for five-year terms).

(4) H. Michel, L. Willemez, *"Les conseils de prud'hommes entre défense syndicale et action publique", Mission de recherche Droit et Justice, 2007*

(5)H. Michel, L. Willemez, *"Les conseils de prud'hommes entre défense syndicale et action publique"*, Mission de recherche Droit et Justice, 2007

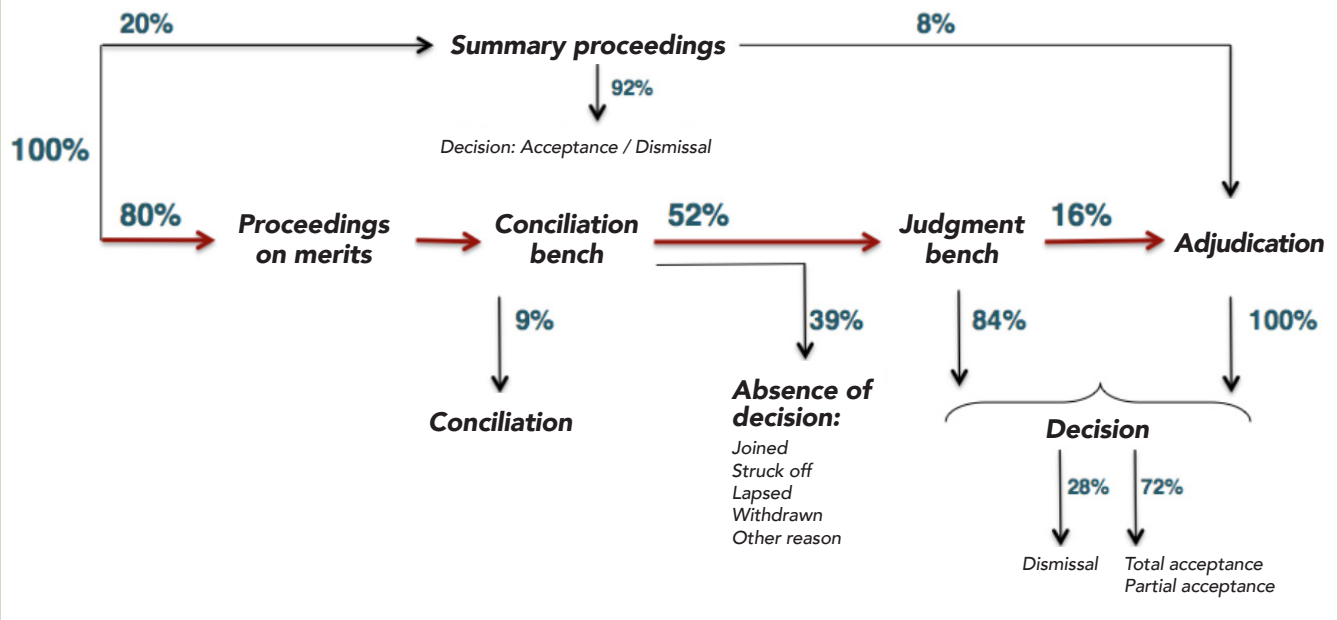
(6) Employment tribunal judges can also refer the case directly to the adjudication bench, but in practice less than 0.01% of cases go directly from the conciliation bench to the adjudication bench.

(7) Munoz-Perez, B. and Serverin, E., *"Le sort des demandes prud'homales en 2004"*, Infostat Justice, No. 87, 2004.

fails, the judges can refer the case to the judgment bench: this applies for 52% of the cases heard in conciliation proceedings[6]. Finally, 39% of the cases are not settled through conciliation but nevertheless do not lead to a judgment on the merits of the main issue (*"jugement au principal"*)[7]. This can be explained by the claimant failing to appear (the case "lapses" (*"caducité"*) in 3% of cases), by the claimant withdrawing the claim (*"désistement"*, as in 10% of the cases), or by the claimant lacking diligence (resulting in the case being struck off (*"radiation"*), as in 14% of the cases). In practice, lapse or withdrawal may reflect a deal being struck between the parties out of tribunal rather than a genuine abandonment of the initial claim. Finally, 8% of cases are joined to other cases related to the same parties and considered as being similar. The judgment bench, like the conciliation bench, must respect the principle of equal representation whereby the number of judges from the employer college is equal to the number of judges from the employee college. The bench should have at least four judges but may have a larger number of members. Following a majority agreement or vote of the judges, 87% of cases lead to a decision in favour of one party. 72% of those decisions rendered are favourable to the claimant (an employee rather than an employer in 95% of cases[8]) and therefore accept totally or partially the claims made[9].

When there is a tie in the votes expressed by the judges on the judgment bench, the case is referred to an "adjudication" (*"départage"*) hearing[10]. The bench is then theoretically composed of the same judges as in the judgment hearing, plus a professional judge – the adjudicating or arbitrating judge (*"juge départiteur"*) – normally hearing cases at the district court (*"tribunal d'instance"*). The adjudicating judge makes the difference by casting his or her vote. The fact that the number of votes cast is an odd one (the votes generally being cast by four judges and the adjudicating judge) always enables a majority to be attained. This adjudication procedure concerns 16% of the cases heard by the judgment bench and 7% of the cases judged on merits.

FIGURE 1: Workings of the "conseils de prud'hommes"



Notes : Percentages established over all of the French employment tribunals for the period 2004-2014. The data used do not cover the minority of cases that undergo extraordinary proceedings. This can induce a conciliation coefficient that is slightly biased downwards.
Understanding the figure: each percentage is calculated relative to the number of cases presented before the preceding stage. e.g.: 52% of the cases presented before the conciliation bench are then brought before the judgment bench.
Source: http://www.justice.gouv.fr/statistiques.html

(8) Guillonneau, M. and Serverin, E., "*Les litiges individuels du travail de 2004 à 2013 : des actions moins nombreuses mais toujours plus contentieuses", Infostat Justice*, No. 135, 2015

(9) The French Law of 6 August 2015 made a slight change in the way the employment tribunals operate, in particular by introducing a smaller judgment bench. The description of the French employment tribunals and the statistics presented in this policy brief relate to the period pre-2015. For a presentation of the changes made in 2015, see Desrieux, C. and Espinosa, R., "*Enjeux et perspectives de l'analyse des prud'hommes", Revue Française d'Economie*, vol. 23, No. 1, p. 137-167, 2017 (in particular p. 161).

(10) In practice the judges are sometimes absent from the judgment bench and are replaced when they are unavailable.

RECENT DEVELOPMENTS: CASES THAT ARE INCREASINGLY COMPLICATED TO RESOLVE?

Processing times that are increasingly long

The increase in the length of time required to process the cases is the focus of criticism from employment tribunal stakeholders: claimants, judges, and administrative staff are complaining about the lead times that they deem to be excessive[11]. For the judicial staff, this trend is attributable to reduced resources and increased pressure at work. For the claimants, the opportunity cost of the proceedings constitutes a significant obstacle when seeking a new job. While we can observe an average lead time for settling all of the cases (all proceedings pathways combined) of 9.5 months for the years 1989, 1990, and 1991[12], according to our data, that lead time extends to 10 months in 2004, and to 13 months in 2014, i.e. a lengthening of 30% in ten years.

At the same time, the rate of conciliation has continued on its long-established downward path, falling from a value that was already low of 11% in 2004 to 7% in 2014, i.e. undergoing a relative reduction of nearly 40% (Table 1). Conversely, the use of adjudication has increased slightly (Table 1). These variations offer a mechanical explanation for over one-third of the lengthening in the lead time for processing the cases. Each additional step taken in the process of settling the disputes automatically and mechanically extends the lead time for processing a case. Thus, a case that ends on the conciliation bench (regardless of whether a conciliation is actually reached) lasts, on average, only 8.4 months. This average lead time is about 13.8 months for a case that ends on the judgment bench, and 21 months for a case requiring intervention from an adjudicating judge[13].

The increasing proportion of claims relating to dismissal for personal reasons

The variations observed can also be explained by a change of nature of the claims brought before French employment tribunals. Since the nineteen nineties, the proportion of claims related to termination of employment contract has undergone very rapid growth: that reason was the subject of 5 claims out of 10 in 1990, 6 out of 10 in 2002[14], and 9 out of 10 in 2013. It is, in particular, dismissal pour personal reasons that has become the predominant cause of the disputes. In 2013, 76% of cases were focused on disputing dismissal for personal reasons, as against 66% in 2004. Disputing dismissal for economic reasons represents less than 2% of all of the cases brought before the employment tribunals[15], as do the other types of claims, such as payment of compensation or of salaries, such claims representing less than 2% of cases today[16], as against 30% in 2002[17].

It can also be noted that the vast majority of disputes brought before the employment tribunals concern termination of indefinite-term employment contracts: it was that type of contract that was involved in 93% of the claims filed in 2013[18]. The age of the employees making the claims is also increasing: the proportion of claimants aged over 50 grew from 21% to 34% from 2004 to 2013, while the share of the under-30s fell from 24% to 15% over the same period[19]. Finally, the continuous reduction in the share of cases declared to have lapsed, from 4% in 2004 to 2% in 2014, would suggest that the claimants are increasingly involved in the cases.

TABLE 1: Variation in the average duration of cases, in the average number of cases completed per tribunal, in the average rates of conciliation, in the average rates of acceptance when decisions are rendered on judgment benches, and in the average rates of adjudication from 2004 to 2014

Year	Duration of the cases (months)	Average number of cases completed per tribunal	Rate of conciliation (%)	Rate of acceptance of claims when decisions are rendered (%)	Rate of adjudication after going via the judgment bench (%)
2004	10.1	1563	11.0	71.8	16.2
2005	10.1	1502	10.7	72.3	15.4
2006	10.2	1494	10.6	71.7	14.5
2007	10.3	1448	10.7	71.7	14.7
2008	11.1	1867	9.5	72.3	17.1
2009	11.0	1831	10.0	73.7	16.8
2010	11.6	1957	8.3	72.5	15.6
2011	12.2	1954	8.1	73.1	17.7
2012	12.7	1788	7.7	72.7	15.9
2013	12.8	1755	7.5	72.3	17.9
2014	13.0	1792	7.1	72.4	17.1

Notes: The rate of conciliation is the share (in %) of the cases judged on merits for which a decision is rendered as of the conciliation bench stage. The rate of adjudication corresponds to the proportion of cases for which a decision cannot be rendered before the judgment bench. For the years 2004 to 2007, the total number of cases completed was unavailable, and so it was calculated on the basis of the sum of the cases completed in proceedings on merits and in summary proceedings.
Source: http://www.justice.gouv.fr/statistiques.html

(11) A Lacabarats, "*L'avenir des juridictions du travail : vers un tribunal prud'homal du XXIème siècle*"

(12) Serverin, E. and Vennin, F., "*Les conseils de prud'hommes à l''épreuve de la décision : la départition prud'homale*", report, La Documentation française, 1995.

(13) Estimations by the authors on the basis of interpolation methods based on the average durations of the cases brought before the various tribunals.

(14) De Maillard Taillefer, L. and Timbart, O. "*Les affaires prud'homales en 2007*", *Infostat Justice*, No. 105, 2007.

(15/16) Guillonneau, M. and Serverin, E. (2015), *op. cit.*

(17) De Maillard Taillefer, L. and Timbart, O., *op. cit.*

(18) Impact study for the French bill for growth, economic activity, and equal opportunities, 2014.

(19) Guillonneau, M. and Serverin, E. (2015), *op. cit.*

Has the "Dati reform" contributed to the lengthening of the duration of the cases?

Once the effects of the increase in non-conciliated cases that go to adjudication have been neutralised, we still observe a residual increase in the lead time for processing the cases of nearly 2 months from 2004 to 2014. The Dati reform of 2008 (named after the Justice Minister of the time)[20], which reduced by about 20% the number of employment tribunals over the territory of France (from 271 to 210 tribunals)[21], is sometimes accused of having reduced the means of the tribunals and thus of having participated in lengthening the durations of the cases. A study by Espinosa, Desrieux and Wan (2015)[22] nuances that conclusion. More precisely, during the reform, the cases that came under each of the tribunals that were closed were transferred to one other clearly identified tribunal. It is thus possible to distinguish between three categories of tribunal after the reform: (i) the closed tribunals[23], (ii) the "case-receiving" tribunals whose jurisdiction areas were enlarged because they took over the cases previously attributed to a tribunal that had been closed, and (iii) the "unaffected" tribunals that are unaffected by the reform because they have not been closed and they do not have to take over any cases from the closed tribunals. It would seem that the reform has not led to a significant rise in the average lead time for processing the cases at national level. This can be explained by the staff numbers being maintained: the employment tribunal judges and most of the administrative staff of the closed tribunals were transferred to the "case-receiving" tribunals. However, an analysis of the local effects tempers that conclusion. The closer a "case-receiving" tribunal was to a closed tribunal, the more the average lead time for processing the cases in the "case-receiving" tribunal increased following the reform. Transferring the cases to such tribunals was probably facilitated by the effect of their closeness, which might have created a congestion effect. Finally, the higher the number of cases transferred from the closed tribunals to the case-receiving tribunals, the more the average processing lead time was increased, and this was even more marked two or three years after the reform (2011 and 2012)[24]. It is thus observed that the number of tribunals, their geographical distribution, and the number of new cases that are filed with them, are significant determinants of the average lead time for processing the cases. By considerably reducing the number of tribunals and by redefining the boundaries of their jurisdictions, the Dati reform induced a strong reallocation of the cases and of the resources over France as a whole, without however considerably increasing the average lead time for the proceedings.
This indirectly confirms that the long lead times for proceedings that are reproached of the employment tribunals remain related to their limited resources in a context of major changes in the contents of the cases brought before them. The cases might have become more difficult to settle, in particular through mere conciliation.

VARIABILITY IN THE DECISIONS BETWEEN TRIBUNALS: ARBITRARINESS OF JUSTICE OR DIFFERENCES BETWEEN THE CASES BROUGHT?

High variability...

Of the 210 tribunals existing in 2014, the lead time for processing the cases that was observed over the period from 2004 to 2014 varied from less than one month to nearly 40 months depending on the tribunals and on the years (Figure 2). The ratio between the 9th and the 1st deciles of lead time for processing the cases (d9/d1) shows that the 10% of the tribunals that handle the cases the slowest have processing lead times more than twice as long as the fastest 10% of the tribunals. Only a minority of tribunals managed to process their cases in under 7 months during one of the years of the period 2004-2014. Finally, one quarter of the observations (a tribunal considered for a given year) have lead times greater than 13 months, and 5% have very long lead times, in excess of 18 months.

The variability of the rate of conciliation between tribunals appears to be relatively high: the rate of conciliation thus varies from less than 1% to nearly 40% depending on the tribunals, and the d9/d1 ratio is about 3.5, showing that the 10% of the tribunals that attain most conciliations manage to achieve conciliation 3.5 times more than the 10% that attain the least conciliations. The d9/d1 ratio for the distribution of the rate of adjudication is even higher (close to 9), revealing very high variability between tribunals for this variable. This variability can be explained in particular by the large number of tribunals that have rates of adjudication considerably higher than average, and that can be as high as over 80%.

Finally, the overall variability of the rate of decisions favourable to the claimant is lower than the variability of the indicators more directly related to how the tribunals operate (duration of the cases, rate of conciliation, use of adjudication): the average d9/d1 ratio is only 1.34. On average, the cases brought before the judgment bench have a 72% chance of being settled by a decision that is favourable to the claimant. Admittedly, this figure varies from 8% to 97% depending on the years and the tribunals, but with a very high concentration around the average: 80% of the observations have rates in the range 60% to 80%.

(20) This reform was put in place by French Decree No. 2008-514 of 29 May 2008. It was applied as from 1st January 2009.

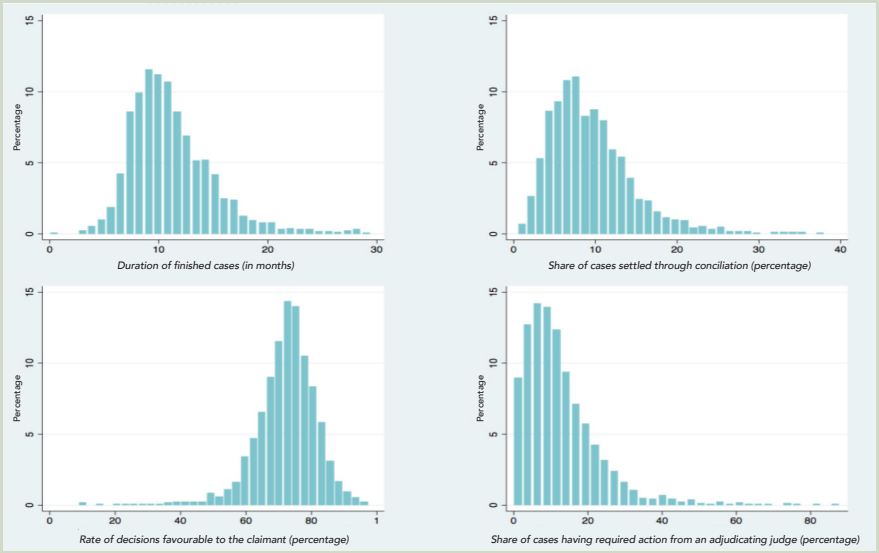
(21)Sixty-two tribunals were closed, and one new tribunal was created, bringing the total number of employment tribunals to 210 after the reform. The will of the government was then to retain at least one tribunal per département, and to close the tribunals processing small numbers of cases.

(22) Espinosa, R., Desrieux, C. and Wan, H., "Fewer Courts, less Justice? Evidence from the 2008 French Reform of labor Courts", *European Journal of Law and Economics*, vol. 43, No. 2, 2017.

(23) The cases from each closed tribunal were transferred to one case-receiving tribunal only. It should be remembered that litigants are not free to take their cases to the tribunal of their choice. Rather they are assigned to a particular tribunal according to the place of work of the employee or to the registered office of the company.

(24) The study uses econometric methods that are based on counterfactuals and estimations through instrumental variables to take into account the interaction between the durations of the cases and the number of new cases filed in each tribunal (these two factors influence each other mutually).

Figure 2: Distribution of the tribunals over the period from 2004-2014 according to a) the average duration of the completed cases; b) the rate of conciliation; c) the rate of adjudication; and d) the rate of decisions favourable to the claimant



Understanding the graphs: The graphs make it possible to observe how the tribunals are distributed in terms of four operating indicators. In the top left graph, it can be observed, for example, that about 12% of the tribunals take an average of ten months to process the cases, and that most of those tribunals take an average of in the range 7 to 16 months to process the cases.
Notes: The share of the cases that are settled through conciliation is calculated relative to all of the cases brought to be heard on merits, the rate of decisions favourable to the claimant is calculated relative to all of the cases settled on the judgment bench, and the rate of adjudication is calculated relative to all of the cases brought before the judgment bench. The shapes of the distributions remain similar when we look at the observations of the year 2014 only.

... that has hardly varied over time

The variability between tribunals of these indicators (duration of cases, rate of conciliation, rate of use of adjudication, and rate of acceptance of claims when a decision is rendered) changed only slightly over the period 2004-2014. A more in-depth statistical analysis confirms that over 30% of the variability of each indicator over the period is explained by the characteristics of the tribunals. This explanatory capacity varies from 34% when we are seeking to explain the variations in the rate of decisions favourable to the claimant to 64% as regards the duration of the cases. Conversely, our analyses show that the variation over time explains less than 1% of the observed variability in the rate of decisions favourable to the claimant and in the rate of adjudication, and from 7% to 8% for the duration of the cases and the rate of conciliation. Finally, these statistics highlight significant differences between tribunals that can be explained either by differences between the cases they handle, or by differences related to their resources or to the way in which they hand down justice.

UNION MEMBERSHIP OF THE JUDGES ELECTED BY EMPLOYEES DOES NOT INFLUENCE THE DECISIONS RENDERED BY THE VARIOUS DIFFERENT TRIBUNALS

Does the composition of the tribunals (i.e. the proportion of judges coming from reformist unions and non-reformist unions) influence the outcomes of the disputes (conciliation, decision, rate of adjudication)? Based on data relating to each dispute processed in the French employment tribunals from 1998 to 2012[25], Desrieux and Espinosa (2016)[26] follow the path of each case (success or failure of the conciliation, abandonment of the claim, judgment, adjudication, etc.) and attempt to explain the final outcomes of the disputes by various factors, including the compositions of the tribunals[27] – and more precisely by the proportion of judges belonging to unions that are often considered to be the least-reformist or the most confrontationals (CGT and CGT-FO) present in each tribunal. Using two different methods making it possible to neutralise the differences between the cases brought before the various tribunals, they show that the composition of the tribunal does not significantly influence the decision to accept or to dismiss a case (on the judgment bench or on the adjudication bench). A strong presence of the CGT (to the detriment of the CFDT, for example) among the judges representing the employees does not therefore appear to increase the rate of decisions favourable to employees. This could be explained by the equal-representation composition (number of judges representing employers equal to number of judges representing employees) of the judgment bench. However, composition of the tribunals is not totally neutral. It is observed that the rate of conciliation, the rate of abandonment of the cases, and the rate of adjudication are significantly higher in the tribunals in which the CGT and/or the CGT-FO are in a majority among the employee representatives. Further analysis suggests that those tribunals use adjudication to a greater extent, which lengthens the lead times for processing the disputes. The parties seem to anticipate this phenomenon by negotiating to a greater extent upstream in such tribunals (in the conciliation phase or out of the tribunal), which would explain the higher rates of conciliation and of abandonment of cases. The negotiation is facilitated for cases for which the outcome is easily identifiable (favourable or otherwise to the employee). On average, the cases that reach the judgment bench in such tribunals with non-reformist majorities are thus more complex, thereby explaining the higher rate of adjudication.

CONCLUSION: HOW MUCH ARBITRARINESS IS THERE IN THE DECISIONS RENDERED?

Analysis of the statistics published by the French Justice Ministry reveals high variability in the way the various different employment tribunals operate. The rates of acceptance of the claims brought before the tribunals are closer from one tribunal to another than the other operating variables (duration of the cases, rate of conciliation, etc.) but they nevertheless vary significantly (Figure 2). Does that mean we can deduce that the decisions rendered include a significant amount of arbitrariness?

In the absence of very detailed information on the cases brought before each tribunal, it is unfortunately impossible to come to a definite conclusion. The issue of partiality of justice is thus discussed here solely through one example: the example of union membership of the employee judges that can vary from one tribunal to another across the territory of France. According to the work by Desrieux and Espinosa (2016), it does not generate any difference in the decisions rendered. Naturally, those findings do not suffice to conclude that there is never any arbitrariness at the employment tribunals. However, it does make it possible to dismiss one possible source of partiality, namely the one coming from the union-related composition of the various different employment tribunals.

References of the study :
This policy brief uses the working document produced by CEPREMAP (France's Centre for Economic Research and its Applications) Thomas Breda is a researcher at CNRS (France's National Centre for Scientific Research), and at the Paris School of Economics, and a programme director at the Institut des Politiques Publiques. Esther Chevrot-Bianco is a doctoral student at the University of Copenhagen. Claudine Desrieux is a professor at CRED (the Centre for Research in Economics and Law, Université Paris II Panthéon-Assas). Romain Espinosa is a researcher at CRED (the Centre for Research in Economics and Law, Université Paris II Panthéon-Assas). This work received funding from CEPREMAP.

(25) Data from the French Justice Ministry, obtained through the CASD ("*centre d'accès sécurisé à distance*" or "centre for secure remote access"). The study focuses on the cases filed by employees, not joined to other cases, and for which conciliation is mandatory, which reduces the unobserved heterogeneity relative to the previous analyses. The database thus contains over 1,300,000 cases.

(26) Desrieux, C. and Espinosa R., "Case selection and self-fulfilling anticipations", Working document, 2016.

(27) Various techniques are proposed in the study by Desrieux and Espinosa (2016) for measuring the compositions of the tribunals: simple calculations of proportion, or ideal points. The results are obtained by monitoring numerous characteristics of the cases: representation of the parties (lawyer or union representative), sex of the judges, fixed effects per section of each tribunal, fixed effects of the year, macroeconomic indicators of the environment around the tribunal (GDP, unemployment rate).