

## Interviewing Judges in the Transnational Context

*Urszula Jaremba en Elaine Dr. Mak*

### **Aanbevolen citeerwijze bij dit artikel**

Urszula Jaremba en Elaine Dr. Mak, 'Interviewing Judges in the Transnational Context', *ReM* 2014-05, p.

## 1 Introduction

Qualitative interviewing, including interviewing of judges, is a relatively new method in the field of legal studies, raising the questions of its added value and adequate application in this field. In recent years, an additional dimension has been added to this methodological reflection in light of the globalization of the legal context and its effects on the role of courts. The interview method is now also applied in studies concerning the transnational context of judicial decision-making, meaning the context in which international, regional and national law interact. In this article, we will reflect on two main questions related to these developments. Firstly, why should legal researchers consider interviewing judges as a research method? Secondly, which methodological considerations should be taken into account when elaborating this research method?

The reason for writing this article is the desire to share our experiences with interviewing judges as a research method in studies concerning judicial decision-making in the transnational context. Both of us conducted separate research projects which included qualitative interviewing over the past five years. One of us analysed the knowledge, experience and attitudes regarding EU law and its application among civil judges in Poland (Jaremba 2014). The other author studied the changing practices of the highest courts in five western countries (the United Kingdom, Canada, the United States, France and the Netherlands) under the effects of globalization (Mak 2013). Even though the studied subject matters differ, the methodological tools used by both of us considerably overlap and share similar objectives. Hence, compiling our experiences with socio-legal and qualitative interviewing methods in one article seems valuable in order to gain insights into the possibilities and difficulties of using this method. In this regard, our experiences might serve as a reference point for legal scholars who consider applying methods from other academic disciplines to their research, in particular when analysing aspects of the transnational context.

In this article, we first set out the motives which can inspire the use of interviews with judges as a research technique in present-day legal scholarship (par. 2). In

light of our personal backgrounds, we focus our analysis on legal scholarship in continental-European systems, in particular the Netherlands, and its development in the globalizing legal context. Next, we take a closer look at the research design required to meet the standards of socio-legal research (par. 3). In this regard, we draw on our personal experiences with the interviewing of judges, as well as from other pertinent examples. In the analysis, we reflect on the main considerations of employing the qualitative interviewing method. Finally, some overall conclusions are presented (par. 4).

## **2 Motives: the emergence of interdisciplinary legal research on judicial practices**

Interdisciplinarity can be described as a methodological approach in which two or more disciplines or perspectives are integrated in one research framework. For instance, legal scholarship and social sciences are combined to result in socio-legal studies (Banakar & Travers 2005, p. 5; Taekema & Van Klink 2011; Schrama 2011). When considering the current research orientation and the research projects conducted at law schools in the Netherlands and to some lesser extent elsewhere in Europe (concerning the UK, see Banakar & Travers 2005), interdisciplinarity seems to be gaining an increasingly important role. Related to this development of interdisciplinary legal research, the use of empirical research methods in the field of legal studies is increasing, in particular the use of the qualitative method of interviewing. Below we will sketch the main aspects of this development (par. 2.1), and describe its implications for the study of the judicial function (par. 2.2).

### ***2.1 The increasing interdisciplinarity and empirical orientation of legal research***

Legal scholarship in continental-European systems traditionally consists of a dogmatic analysis of legislation, case law and legal doctrine. This ‘internal’ law approach (Riesenhuber 2011, p. 125) is still dominant in many law schools in Germany and France, which stand at the basis of this research tradition. In the Netherlands, this approach has remained the most significant one in some areas of legal research, in particular in those areas which are closely connected with legal practice, such as business law, tax law and criminal law. However, legal scholars in the Netherlands have increasingly moved towards the orientation of legal research in the US, which since the 1970s has become increasingly interdisciplinary (Taekema 2011, p. 37). In the context of the Dutch legal scholarship, the ‘law and ...’ disciplines, which take an ‘external’ perspective on the law (Riesenhuber 2011, p. 125), have become very significant. This development of interdisciplinary approaches was accompanied by an increased use of empirical research methods, including qualitative interviewing, by legal scholars. As observed by Miles and Sunstein (2008, p. 833), who considered the evolving environment of US legal scholarship, ‘(...) recently, the appetite for empirical work in general has grown rapidly among law professors, and empirical research within law schools has become so prevalent as to constitute its own subgenre of legal scholarship, “empirical legal studies.”’ Empirical approaches are frequently applied in research in the fields of ‘law and economics’ and ‘law and society’ (Suchman & Mertz 2010).

Which factors can explain this development of interdisciplinary, including empirical, approaches? Larouche argues that challenges to traditional legal

scholarship exist currently as a result of long-term socio-economic trends, such as globalization and digitalization, and as a result of the competition for scarce resources for conducting research (Larouche 2012, p. 206). In order to deal with these challenges, Larouche advocates a vision of global legal scholarship, characterized by a post-national, interdisciplinary and empirical orientation of legal research (ibid., p. 207; see also Van Gestel, Micklitz & Poiarés Maduro 2012). The post-national focus enables a more abstract study of law, fitting the current intertwinement of legal regimes in the world (Larouche 2012, p. 208-209). Interdisciplinarity, which can take different degrees (cp. Taekema & Van Klink 2011), allows for the enriching of legal scholarship with the insights provided for example by research in the disciplines of philosophy, political science, economics, sociology, or psychology (Larouche 2012, p. 213-214). An empirical focus, finally, makes it possible to ‘recast’ the connection of legal scholarship with reality, offering a broader and more direct view than the connection with reality which traditionally exists through the link with legal practice (ibid., p. 215).

The outlined development of interdisciplinary, including empirical, legal research and its relation to socio-economic tendencies are visible in the field of research which is the focus of this article: the socio-legal study of (comparative) judicial practices.

## ***2.2 The emergence of a new area of research: (comparative) judicial practices***

In the current context of a developing ‘global’ legal scholarship, the study of the judicial function, too, invites post-national, interdisciplinary, and empirical approaches. With regard to the post-national aspect of legal research, the Europeanization and internationalization of law have yielded research questions concerning the role of the judiciary in a multi-level legal system with a plurality of legal actors. A post-national perspective is needed, for example, in the study of judicial decision-making in the context of EU law and the European Convention on Human Rights (ECHR). Legal research has been required to address the role, competence, and methods of interpretation used by the European Courts; the role, competence, and methods of interpretation used by national courts with regard to EU law and the ECHR, and the interaction between the European and national courts (Claes 2006; Gerards 2011). Further research has developed concerning the application of public international law in national courts (Betlem & Nollkaemper 2003).

Interdisciplinary, including empirical, approaches to the study of judicial practices have developed initially as a result of the emergence of socio-legal studies since the 1970s. Ground-breaking scholarship in the Netherlands includes the research of Bruinsma concerning the background to civil cases judged by the Dutch Supreme Court (Bruinsma 1988) and to summary proceedings before the Dutch courts (Bruinsma 1995) as well as the research conducted by Barendrecht regarding the guarantee of quality and the leadership role of the Supreme Court in the judgment of civil cases (Barendrecht 1998). In the current context of globalization and increased societal demands, legal scholars have shifted their attention to the role of ‘extrasystemic factors’ (Lollini 2007) in judicial fact-finding and in the reasoning of judgments. On the one hand, the increased societal call for correct and transparent judicial decisions has triggered analyses of psychological defaults in judicial decision-making

(Rassin 2007; Rachlinski 2012; Kapardis 2014), and of the judicial assessment of human behaviour (Van Boom, Giesen & Verheij 2008) and complex evidence (Derksen 2010). In that context, scholars belonging to the New Legal Realism stream embarked on the exercise of statistical testing various hypotheses concerning the role law and politics play in judicial decisions to find out that for instance ethnical origin, gender, personality, and other (demographic) features might have impact on judicial pronouncements (Miles & Sunstein 2008, p. 835-840). On the other hand, the increased reference to non-binding sources in legal argumentation, including legislation and case law from foreign jurisdictions as well as legal doctrine, has become a topic of interest for comparative lawyers and legal theorists (Markesinis & Fedtke 2006; Hol et al. 2012).

With regard to the method of interviewing, more particularly, in the last decades various scholars have resorted to this method to study different aspects of the judicial function and practice. This method was employed, for example, to assess the questions of: activism at the Court of Justice of the EU (Solanke 2011); judicial independence under political regimes (Hilbink 2008); factors influencing decisions of US family-court judges (Richman 2009); the view of judges on the implementation of sentencing (Beyens, Snacken & Van Zyl Smit 2013); attitudes of Bosnian judges and prosecutors towards the International Criminal Tribunal for the former Yugoslavia (The Human Rights Centre 2000); the impact of training and language competence on judicial application of EU law in Hungary (Tatham 2012); the feminization of the Portuguese judiciary (Duarte et al. 2014); the process of judicial dialogue and learning across borders and judicial internationalization (Lazega 2012); or the impact of court organization on judicial decision-making (Cohen 2002).

All in all, this overview demonstrates that the area of legal scholarship engaged with judicial practice has witnessed a complex and comprehensive contextual and methodological development in the recent decades. These changes call for a further reflection on the interdisciplinary and empirical research methodology, in particular the predominant method of interviewing in this area.

### **3 Methodology: possibilities and challenges of interviewing judges in the transnational context**

We will first present an overview of social-scientific approaches to qualitative interviewing. Next, the use of this technique in our research projects will be outlined.

#### ***3.1 General overview: social-scientific research paradigms and research methods***

Philosophies of science present different and competing accounts of what constitutes a scientific method and methodology (Seale 2004, p. 8-17). By and large, there are three general research paradigms in the field of social sciences: post-positivism, critical theory, and interpretivism (Willis 2007, p. 8). The first paradigm is based on the assumption that only neural (objective), empirical and scientific method can reflect the truth about our social reality. The critical theory, which focuses on the issue of power relationships in societies and the impact thereof is based on critiquing and changing society as such, instead of only trying to understand or explain it (see further *ibid.*, p. 81-91). Finally, interpretivism, which is directed against positivism and empiricism, is based on

the ideas of rationalism and relativism (ibid., p. 48). Interpretivists, among whom we count ourselves, believe that the reality as we know it is socially constructed and that the pre-existing thoughts and views of researchers themselves influence and shape research (ibid., p. 96).

Within the above-mentioned research paradigms a variety of quantitative and qualitative methods are available and used by researchers. In the pragmatic approach, which prevails in contemporary socio-legal scholarship, quantitative and qualitative methods can be combined and their results integrated in a single research project. Quantitative methods that are resorted to are for instance surveying and statistical analysis of data. Qualitative approaches, which produce descriptive data, include ethnographic research (case study), historical study or content analysis. In those latter examples, the research techniques and tools that are usually employed are interviewing (fully structured, semi-structured or unstructured), participant observation or document analysis (Banakar & Travers 2005, p. 14). Qualitative interviewing constitutes a very common research technique in the field of social and cultural research (Seale 2004; Maxwell 2005) but it also gets increasingly more attention in other disciplines, including legal scholarship.

The interviewing of judges, as a research approach, fits in the described development of interdisciplinary and empirical research concerning judicial practices. Based on the experiences obtained in our own research projects, we will address several considerations attached to this approach. These considerations include (1) the role of interviewing in the empirical research methodology, (2) access to and representativeness of the group of respondents, (3) using the semi-structured interview technique, (4) transcription of the data and the added value of the interviews in the analysis. The description of the methodological choices made in our research projects will clarify how these aspects can be made more concrete and which difficulties need to be tackled in this regard.

### ***3.2 The role of interviewing in the empirical research methodology***

In the framework of a doctoral research project concerning the functioning of Polish civil judges as decentralized EU judges (Jaremba 2014) an interdisciplinary approach that integrated both legal and empirical research methods was used. The ultimate aim of the project was to find out how familiar the judges are with the legal order of the EU, what their experience is with resorting to and applying it in the daily practice, and which attitudes judges have towards EU law. From the pragmatic point of view, the project's aim was to determine how the concerned judges experience (if at all) the application of EU law in practice, and whether there are any factors that hamper the application of EU law by them.

The Polish project adopted the methodological scheme which was developed for a parallel project conducted for the Netherlands and Germany (Nowak et al. 2011). The empirical phase was of a twofold nature and was based on a mixed approach, that is to say both quantitative and qualitative methods were integrated in one project. The choice for combining these methods was underpinned by the complementarity argument in accordance with which the mixed approach is used in order to seek elaboration, enhancement, illustration, and clarification of the results obtained in one method in terms of the results

from another. The research approach consisted of the distribution of an extensive questionnaire among the judges, and subsequently, conducting interviews with those judges who in the questionnaire gave their consent to be interviewed. The questionnaire was distributed among judges of ordinary courts of first and second instance (district and regional levels) and more precisely their civil chambers, including commercial, labour and social security chambers. Appeal courts, the Supreme Court and administrative courts judges were excluded from the survey group (see further Jaremba 2014). The second part of the research, which is of our main interest here, was based on qualitative interviewing. This stage was completed in July 2010, and comprised twenty-five in-depth, semi-structured interviews with judges who originated from courts located in provincial, medium-size and large cities and represented different court chambers of first and second instance courts. They represented both sexes and different age ranges.

Interviews with judges were used as well in a post-doctoral research project concerning the changing role and working methods of highest national courts in five western legal systems (the United Kingdom, Canada, the United States, France and the Netherlands) under the influence of globalization (Mak 2013). The aim of the research was to find out why judges study legal sources which originated outside their own national legal system and how they use arguments from these sources in deciding domestic cases. Through interviews with thirty-three judges in the selected systems, the research aimed to clarify which individual approaches of judges exist with regard to the use of foreign law in judicial decision-making, and how these approaches affect the deciding of cases. Since judicial deliberations are not public and not all considerations made by individual judges are revealed in the judgments of the selected highest courts, talking to the judges themselves was required to establish which personal approaches of judges exist and how influential these approaches are with regard to the use of foreign legal materials in specific courts. The selection of courts took into account similarities and differences which might exist based on (1) the legal tradition in which the highest courts function (common law or civil law), (2) the competences of review, composition and caseload of the courts, and (3) the expected differences in leadership of courts in transnational judicial dialogue on the basis of the size of the legal system in which the court functions and genealogical or linguistic connections with other legal systems.

In the highest courts project, the qualitative method of analysis was preferred over the possibility of a quantitative study. Indeed, as the number of judges on the highest national courts is limited, the collection of reliable quantitative data would require the cooperation of almost all judges on a specific court. This would have been very difficult to achieve. Moreover, the qualitative interview methodology used for the research had the advantage that it enabled participants to express themselves with more nuance than would have been possible in a quantitative anonymous questionnaire approach (see, e.g., Flanagan & Ahern 2011, who used a survey in their research on common law supreme courts; Darbyshire 2011, who used the methods of interviewing and observation with regard to a selected representative sample of judges). Also, the use of interviews as a research method made it possible to ask additional questions, which helped to better interpret the obtained answers. In order to assess its reliability, the information obtained through the interviews was linked to an analysis of case law and other sources which provide information concerning judicial approaches, such as public lectures.

### ***3.3 Access to and representativeness of the group of respondents***

In our projects, the consent to participate in the interview was entirely voluntary and non-binding. In that sense, the empirical projects were very dependent on the willingness of judges to cooperate and share their experience and views on EU law and foreign law respectively. In order to compensate for possible flaws concerning the representativeness of the groups of respondents, the interview method was applied alongside other techniques. In particular, we used the method of triangulation, that is: the use of several research methods in order to check results (Maxwell 2005, p. 93-96).

With regard to the EU law project, it proved very difficult to gain access to the judiciary. Ultimately, the National School of the Judiciary and Public Prosecution facilitated access to approximately 500 judges in five selected judicial units across the country, out of a total of eleven units, who were invited to take part in the quantitative survey. Furthermore, twenty-five interviews were organized. Assumably, the sample was burdened with the problem of selective non-response bias (Lahaut et al. 2002) which implied that only those judges who are experienced and interested in EU law would participate in the empirical part of the study. However, the results of the research suggest that concerns in this regard were to a large extent ungrounded. As a matter of fact, the majority of the participating judges did not have any or had limited knowledge of EU law and experience with its application.

In a similar manner, a challenge for the research project on western highest courts was to obtain a sufficiently large and sufficiently representative number of respondents. Concerning the number of interviewees, the large number of judges in the highest courts of the Netherlands and France required that a pre-selection was made, aiming at a representation of judges from the different highest courts and from the chambers in these courts. Academic contacts of the researcher were able to provide an introduction or recommendation of the project, which helped to gain access to the judges of the examined courts. Furthermore, judges in the highest courts which were approached in later stages of the research, including Canada, the United States and France, may have been persuaded by the fact that their peers in the United Kingdom and the Netherlands had participated in the research project already. Concerning representativeness, it is fair to assume that highest court judges who take a favourable position towards the use of foreign law have been more willing to participate in the research than judges who oppose this practice or contest its usefulness. Still, the collected information shows that judges with a favourable as well as judges with resistant views towards judicial internationalization were represented. Furthermore, since the aim of the research was not to point out quantitative occurrences of the use of foreign law but to describe and analyse the different aspects of the development of the practices of the highest courts, the possible overrepresentation of one 'type' of judges does not seem to pose a problem.

### ***3.4 Using the semi-structured interview technique***

In both projects the interviews took the form of in-depth, semi-structured conversation (see Jones 2003) with the judges. This technique allowed for flexibility and a conversational way of communication. Also, this technique provided the possibility to focus on those matters which were most relevant for

the concerned judge (De Leeuw 2008, p. 317). Qualitative, semi-structured interviewing fits particularly well in the interpretivist research approach that aims at the understanding of socially-constructed reality and human action in specific contexts.

In the Polish project, prior to the interviewing process a list of open questions that touched upon the issues of experience of the judges with EU law, their knowledge of EU law, and their attitudes towards the role which the EU law places on them was prepared. The interviews took between approximately one and two hours. Most of the interviews were recorded. However, several judges did not give their consent to be recorded. During those interviews notes were taken. The sample of judges included those having wide experience with the application of EU law but also those having no experience at all. Likewise, the way the judges assessed their knowledge of EU law ranged between being incompetent in this field, and having an extensive knowledge in that regard. It is against this background that the semi-structured and open-ended technique offered a considerable room for manoeuvring during the interviews, depending on the personal background, knowledge and experiences with EU law of the considered judge. Furthermore, semi-structured interviews made it possible to get answers to the questions but also the reasons for those answers. Also, this technique offered the freedom to explore specific views or opinions in more detail and allowed to touch upon sensitive issues. The obtained results support the view that qualitative (semi-structured) interviewing makes it possible to understand the dynamics of the process, and to investigate in detail the social schemes, informal context, and other variables that other methods do not seem to be capable of capturing. The use of in-depth and semi-structured interviews also permitted to draw attention to the specific problems judges experience with EU law, and hear their recommendations as to the possible improvements in the system that would facilitate and ease their functioning.

In the highest courts project, a semi-structured interview technique was chosen as well. This choice was made in order to obtain as much useful information as possible, while at the same time allowing for the comparison of results related to individual judges, to specific courts and to specific legal systems. The interview questions focused on several main lines of inquiry. These concerned (1) the personal experiences of the judges with international and foreign elements in their decision-making, (2) the judges' participation in the international relations of their court, for example, through judicial networks and exchanges between courts, (3) the types of foreign legal materials used in the judges' decision-making, and the practical aspects of the search for and the use of these materials, including the role of judicial assistants, litigants and legal counsel and academics, (4) the judges' personal background, including legal training and professional experiences before being appointed on the highest court, (5) the judges' perception of their role in the balance of powers at the national level and in the global legal context. Questions based on these themes were brought up during the interviews, while flexibility in the formulation and the sequence of questions was allowed. A central concern in the interview design was to create an atmosphere in which the judges would feel free to express their personal views. For this reason, the judges were informed that any information used in publications would be non-attributed. Furthermore, no interviews were tape-recorded. Most interviews lasted between 45 minutes and one hour and took place in the offices of the judges.



The transnational aspect of the research projects entailed that travelling was included, requiring a considerable amount of communication and planning in advance. Moreover, the projects were dependent on the language skills of the researchers. Concerning the EU law project, proficiency was required in Polish for the interviews with judges and in English for the report on the results and the cooperation with the researchers in the related project on the Netherlands and Germany. Proficiency in Dutch, English and French was needed with regard to the highest courts project.

### ***3.5 Transcription and analysis of the research data: the added value of the interviews***

Qualitative interviewing requires high costs and time investment and features different obstacles of technical and practical nature, such as for instance the choice between writing down the gained information and recording it. In case of the latter option, the researcher should take into consideration the possibility that the consent to be recorded is refused. If a researcher chooses the former option, he must be aware that some elements of the interview may go unnoticed. Next to that, interviewing judges in different countries located on different continents implies high financial costs due to the necessity of travelling. Our experiences show that the costs attached to qualitative interviewing, in particular in a transnational research project, are considerably higher than those attached to the quantitative survey method. Finally, the time required for qualitative interviewing and its further analysis is considerable. Those are by no means the largest stumbling blocks related to this approach, but they should nevertheless be taken into consideration by researchers.

In the Polish project, the interviews were transcribed after the meeting with the judge and analysed with the aim of locating common patterns. The transcribed texts of interviews assisted greatly with locating statements and opinions reflecting social schemes, and looking for common phenomena that would allow the generation of a theory. Interviewing proved to be an excellent technique that facilitated getting to know the judges personally, and observing them as they constructed their own understanding of EU law, and its place in the legal order. It also allowed the development of clarifications and explanations of the quantitative results which were gained by the means of the questionnaire, and a further identification of the problems attached to the functioning of the judiciary in the context of EU law. For instance, the quantitative data showed that judges suffer from the lack of knowledge of EU law. The interviews allowed exploring this issue and the reasons of the lack of this knowledge but also the way the problem of knowledge could be solved. In a similar vein, the quantitative data illustrated that many judges have very limited experience with the application of EU law. The interviews delivered the reasons of this situation and further insights into this issue. It occurred that, for instance, private parties are not very active in bringing EU law issues to the court, or that the judges treat EU law as a somewhat abstract and irrelevant aspect of adjudication, or that simply judges do not have enough time to engage with EU law. Moreover, interviews made it possible to explore the nature of concepts that were lost in the quantitative approach, such as frustration, anticipation or indifference. The vivid presence of the human factor can be interpreted in two opposite ways. On the one hand, seeing the emotions judges showed regarding specific legal issues allowed to indicate those problems attached to the functioning of the judiciary in the context of EU law which the judges find mostly impeding in their work. On the

other hand, it brought along the risk of losing the focus in the interview, and posed a challenging question regarding the manner in which those emotions can be translated, if at all, into the judicial practice, whether they are relevant from the legal point and how they should be integrated in the framework of the entire research (see Schrama 2011, p. 159-161). Furthermore, qualitative interviewing not only provided a contextualized understanding of judicial experience with EU law, but also delivered invaluable insights into the cause-effect relationships of the way in which judges fulfil their function. The interviews illustrated, for instance, how the (lack of) knowledge of EU law and experiences with the application of it influences the attitude judges have towards EU law and the EU-law-related tasks they are supposed to fulfil. Those judges having limited experience with EU law had a somewhat sceptical or anticipating attitude towards it. Those having a very extensive experience with EU law, had a very *daily business* attitude towards the role EU law places on national judges. Furthermore, the interviews pointed to the way factors such as, *inter alia*, relationships with colleagues or the daily 'operational context' (Bell 2006, p. 30) influence the fulfilment of EU-law-related tasks. In other words, the interviews facilitated with interpreting and understanding individual experience of the judges with EU law.

In the highest courts project, notes made during the interviews were typed out as soon as possible afterwards. Mostly, this was done on the same day or on the day after an interview had taken place. The notes of each interview were organized by connecting them with the selected themes of the research and compiled in a country report for each of the examined jurisdictions. In the country reports, preliminary observations were made, including an indication of whether an expressed view was shared by several judges or seemed to be exceptional in the studied court. Furthermore, retrieved public information about the examined courts was connected with the interview results. The country reports formed the basis for the description and comparative analysis of the practices of the highest courts in several academic articles and finally in a book (Mak 2013). Draft versions of these articles and of the book were sent to the interviewed judges for approval and comments. In order to ensure the accuracy of the depiction of the courts and legal systems, further feedback was asked of academic scholars from each of the examined jurisdictions. The comparative and empirical research revealed that a judge's personal approach is a highly determinative factor as regards both the influence granted to binding foreign legal sources, such as international law and EU law, and the use of non-binding foreign legal materials, such as foreign case law, in the deciding of cases. The interviews clarified that individual judges have an important influence on the way in which foreign law is used in their court. Relevant aspects are their involvement (or not) in transnational judicial networks and their interest (or not) in foreign law. The judges also outlined how foreign law is used in the judicial deliberations and reasoning in their court. This information revealed that judges often consider persuasiveness of arguments to be more important than the formal legal status of the sources presenting these arguments. In this regard, individual approaches to judging determine whether judges consider it appropriate or not to use non-binding foreign law in their decision-making. Furthermore, the research clarified that the reference to non-binding foreign sources depends on three main factors: language, tradition and the prestige of foreign courts. The absence of a systematic approach in this context makes judges vulnerable to criticism of 'cherry picking', meaning the practice of only citing those foreign sources which support the desired outcome of a case.

## 4 Concluding remarks

Our experiences with qualitative interviewing show that it is a challenging but also very motivating exercise with a great added value and the potential to enrich legal studies as a complementing method to the classic doctrinal approach. Undoubtedly, no single perspective or methodological approach can reflect a complete picture of the object which is under scrutiny. This is especially true if the object of study concerns a 'moving target', in our projects: to find out how national judges receive and perceive the legal order which is evolving beyond their own state legal system. Still, qualitative interviewing has brought us in the middle of the judicial environment, and has allowed us to learn what it really means to be a judge. It made it possible to identify what and how judges really think, and how they work. It facilitated looking behind the scenes of the formal law and indicating those factors which influence the daily judicial decision-making, which normally would go unnoticed since they cannot be detected by means of purely legal analysis. In our opinion, this approach is particularly valuable in the increasingly internationalized legal context and in light of the related development of 'global' legal scholarship.

However, our experiences with interviewing judges show that there are various aspects attached to this method that must be taken into consideration. Indeed, qualitative interviewing comes with a price tag, mostly in the form of ensuring representativeness and overcoming various technical obstacles. As plausibly observed by Jones (2003, p. 259), '(...) an interview is a complicated, shifting, social *process* occurring between two individual human beings, which can never be exactly replicated.' Our experiences also feed the discussion presented by Banakar and Travers (2005, p. 5), who point to different aspects of interdisciplinarity which have given rise to concerns in scholarly circles. Indeed, further reflection is needed concerning the development of interdisciplinary legal scholarship in order to meet criticism of doctrinal legal researchers who feel that this approach threatens the authority of the legal discipline. Moreover, interdisciplinarity requires broader competences and skills, and this can pose a significant obstacle to legal researchers.

While acknowledging these pros and cons, we hope to have shown in this article that qualitative interviewing has potential as a research method for legal scholars in the research field of (comparative) judicial practices and for legal scholarship more generally. We feel that interviewing judges had a great added value for our own research projects and constituted a very rewarding and engaging exercise.

### References

#### **Banakar & Travers 2005**

R. Banakar & M. Travers (eds.), *Theory and Method in Socio-Legal Research*, Oxford: Hart Publishing 2005.

#### **Barendrecht 1998**

J.M. Barendrecht, *De Hoge Raad op de hei: kwaliteitsbewaking en leiding over de rechtspraak door de civiele cassatie: een analyse en denkrichtingen voor de toekomst*, Deventer: W.E.J. Tjeenk Willink 1998.

#### **Bell 2006**

J. Bell, *Judiciaries within Europe: A Comparative Review*, New York: Cambridge University Press 2006.

**Betlem & Nollkaemper 2003**

G. Betlem & A. Nollkaemper, 'Giving Effect to Public International Law and European Community Law before Domestic Courts: A Comparative Analysis of the Practice of Consistent Interpretation', *European Journal of International Law* 2003, p. 569-589.

**Beyens, Snacken & Van Zyl Smit 2013**

K. Beyens, S. Snacken & D. van Zyl Smit, 'Truth in (the implementation of) sentencing: Belgium and elsewhere', in: T. Daems, D. van Zyl Smit, S. Snacken (eds.), *European Penology?*, Oxford: Hart Publishing 2013, pp. 263-282.

**Van Boom, Giesen & Verheij 2008**

W.H. van Boom, I. Giesen & A.J. Verheij (eds.), *Gedrag en privaatrecht. Over gedragspresumpties en gedragseffecten bij privaatrechtelijke leerstukken*, The Hague: Boom Juridische uitgevers 2008.

**Bruinsma 1988**

F. Bruinsma, *De Hoge Raad van onderen*, Zwolle: W.E.J. Tjeenk Willink 1988.

**Bruinsma 1995**

F. Bruinsma, *Korte gedingen: een rechtssociologisch verslag*, Zwolle: W.E.J. Tjeenk Willink 1995.

**Claes 2006**

M. Claes, *The National Courts' Mandate in the European Constitution*, Oxford: Hart Publishing 2006.

**Cohen 2002**

J.M. Cohen, *Inside Appellate Courts: The Impact of Court Organization on Judicial Decision Making in the United States Courts of Appeals*, Michigan: The University of Michigan Press 2002.

**Darbyshire 2011**

P. Darbyshire, *Sitting in Judgment: The Working Lives of Judges*, Oxford: Hart Publishing 2011.

**Derksen 2010**

A.A. Derksen, 'Valkuilen van de alledaagse waarheidsvinding in de strafrechtcontext', *RM Themis* 2010, p. 194-205.

**Duarte et al. 2014**

M. Duarte, P. Fernando, C. Gomes & A. Oliveira, 'The Feminization of the Judiciary in Portugal: Dilemmas and Paradoxes', *Utrecht Law Review* 2014, p. 29-43.

**Flanagan & Ahern 2011**

B. Flanagan & S. Ahern, 'Judicial Decision-Making and Transnational Law: A Survey of Common Law Supreme Court Judges', *International and Comparative Law Quarterly* 2011, p. 1-28.

### **Gerards 2011**

J. Gerards, 'Pluralism, Deference and the Margin of Appreciation Doctrine', *European Law Journal* 2011, p. 80-120.

### **Van Gestel, Micklitz & Poiares Maduro 2012**

R. van Gestel, H.-W. Micklitz & M. Poiares Maduro, 'Methodology in the New Legal World', *EUI Working Paper Law 2012-2013*.

### **Hilbink 2008**

L. Hilbink, 'Agents of Anti-Politics: Courts in Pinochet's Chile' in: T. Ginsburg & T. Moustafa (eds.), *Rule by Law: the Politics of Courts in Authoritarian Regimes*, Cambridge: Cambridge University Press 2009, p. 102-131.

### **Hol et al. 2012**

A. Hol et al., 'Special Issue: Highest Courts and Transnational Interaction', *Utrecht Law Review* 2012, nr. 2.

### **Jaremba 2014**

U. Jaremba, *National Judges as EU Law Judges: The Polish Civil Law System*, Leiden/Boston: Martinus Nijhoff Publishers 2014.

### **Jones 2003**

S. Jones, 'Depth Interviewing', in: C. Seale (ed.), *Researching Society and Culture*, Thousand Oaks: Sage Publications 2003, p. 257-260.

### **Kapardis 2014**

A. Kapardis, *Psychology and Law: A Critical Introduction*, New York: Cambridge University Press 2014.

### **Lahaut et al. 2002**

V.M.H.C.J. Lahaut, H.A.M. Jansen, D. van de Mheen & H.F.L. Garretsen, 'Non-Response Bias in a Sample Survey on Alcohol Consumption', *Alcohol & Alcoholism* 2002, p. 256-260.

### **Larouche 2012**

P. Larouche, 'A Vision of Global Legal Scholarship', *Tilburg Law Review* 2012, p. 206-216.

### **Lazega 2012**

E. Lazega, 'Mapping Judicial Dialogue across National Borders: An Exploratory Network Study of Learning from Lobbying among European Intellectual Property Judges', *Utrecht Law Review* 2012, p. 115-128.

### **Lollini 2007**

A. Lollini, 'Legal Argumentation Based on Foreign Law: An Example from Case Law of the South African Constitutional Court', *Utrecht Law Review* 2007, p. 60-74.

### **Mak 2013**

E. Mak, *Judicial Decision-Making in a Globalised World: A Comparative Analysis of the Changing Practices of Western Highest Courts*, Oxford: Hart Publishing 2013.

**Markesinis & Fedtke 2006**

B. Markesinis & J. Fedtke, *Judicial Recourse to Foreign Law*, Abingdon: Routledge-Cavendish 2006.

**Maxwell 2005**

J.A. Maxwell, *Qualitative Research Design: An Interactive Approach*, Thousand Oaks: Sage Publications 2005.

**Miles & Sunstein 2008**

T.J. Miles & C.R. Sunstein, 'The New Legal Realism', *The University of Chicago Law Review* 2008, p. 831-851.

**Nowak et al. 2011**

T. Nowak, F. Amtenbrink, M. Hertogh & M. Wissink, *National Judges as European Union Judges: Knowledge, Experiences and Attitudes of Lower Court Judges in Germany and the Netherlands*, The Hague: Eleven International Publishing 2011.

**Rachlinski 2012**

J. Rachlinski, 'How Judges Make Decisions', in: R.W.M. Giard (ed.), *Judicial Decision Making in Civil Law: Determinants, Dynamics, and Delusions*, The Hague: Eleven International Publishing, p. 87-108.

**Rassin 2007**

E. Rassin, *Waarom ik altijd gelijk heb. Over tunnelvisie*, Schiedam: Scriptum 2007.

**Richman 2009**

K.D. Richman, *Courting Change: Queer Parents, Judges, and the Transformation of American Family Law*, New York: New York University Press 2009.

**Riesenhuber 2011**

K. Riesenhuber, 'English Common Law versus German *Systemdenken*? Internal versus External Approaches', *Utrecht Law Review* 2011, p. 117-130.

**Schrama 2011**

W. Schrama, 'How to Carry out Interdisciplinary Research: Some Experiences with an Interdisciplinary Research Method', *Utrecht Law Review* 2011, p. 147-162.

**Seale 2003**

C. Seale (ed.), *Social Research Methods: A Reader*, London: Routledge 2003.

**Seale 2004**

C. Seale (ed.), *Researching Society and Culture*, Thousand Oaks: Sage Publications 2004.

**Solanke 2011**

I. Solanke, "'Stop the ECJ'? An Empirical Analysis of Activism at the Court', *European Law Journal* 2011, p. 764-784.

**Suchman & Mertz 2010**

M.C. Suchman & E. Mertz, 'Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism', *Annual Review of Law and Social Science* 2010, p. 555-579.

**Taekema 2011**

S. Taekema, 'Relative Autonomy: A Characterisation of the Discipline of Law', in: B. van Klink & S. Taekema, *Law and Method: Interdisciplinary Research into Law*, Tübingen: Mohr Siebeck 2011, p. 33-52.

**Taekema & Van Klink 2011**

S. Taekema & B. van Klink, 'On the Border: Limits and Possibilities of Interdisciplinary Research', in: B. van Klink & S. Taekema, *Law and Method: Interdisciplinary Research into Law*, Tübingen: Mohr Siebeck 2011, p. 7-32.

**Tatham 2012**

A. Tatham, 'The Impact of Training and Language Competence on Judicial Application of EU Law in Hungary', *European Law Journal* 2012, p. 577-594.

**The Human Rights Centre 2000**

The Human Rights Centre and the International Human Rights Law Clinic, 'Justice, Accountability and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors', *Berkeley Journal of International Law* 2009, p. 102-164.

**Willis 2007**

J. Willis, *Foundations of Qualitative Research: Interpretive and Critical Approaches*, Thousand Oaks: Sage Publications 2007.