CHAPTER FOUR

POLISH CIVIL JUDGES VERSUS THE EU LEGAL ORDER: KNOWLEDGE, EXPERIENCE, AND ATTITUDE

1. Introduction

As was observed in the previous chapters, the research methods traditionally used in legal academic discourse about the functioning of national judges in the context of EU law do not lend themselves to answer the questions posed at the beginning of this book. Therefore, a different approach is adopted in this chapter, whereby it provides a theoretically and methodologically distinct outlook by focusing on judges’ personal perspectives regarding judicial activity in the context of EU law. This strategy makes it possible to see how national judges work with EU law at ground level, and sheds light on distinct and more pragmatic aspects of their ability to function as EU law judges.

In the following discussion, the results of the empirical study carried out among Polish civil judges in district and regional civil courts are presented. The analysis is based predominantly on results stemming from the quantitative part of the study, which take the form of simple proportion statistics regarding particular variables tested in the questionnaire. Selected data are presented in the form of charts and graphs, while in some instances the method of contingency tables is employed to indicate the relationship between variables. The analysis is not confined to the quantitative aspect. In many instances, outcomes of the quantitative part of the study are broadened by insights from the qualitative part. For that purpose, quotations from the interviews are used in order to reflect faithfully the views of judges and to complement the quantitative data. In addition, the analysis is enriched by observations made by different legal and political science scholars, who offer plausible explanations regarding some of the results. This triangulation process facilitates the validation

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1 Citations are translated literally from Polish to English, and thus may contain some colloquial expressions. This allows for a clearer reflection of the way judges perceive EU law. Citations originating from the questionnaire are assigned a number; those originating from the interviews are assigned a letter.
and enhancement of the presented data and the presentation of a more complete picture.²

The data are modeled in several clusters that address various aspects of the functioning of national judges in the context of EU law. The first section is devoted to the aspect of knowledge of EU law and the manner in which it operates among the judges. This is dictated by the assertion that knowledge of EU law is one of the basic preconditions of an adequate functioning of national judges as EU law judges. The subsequent section addresses the issue of attitudes and conceptions concerning EU law and the legal order of the European Union. Finally, judges’ experiences with EU law are discussed. The analysis does not strictly follow the subsequent line of questions asked in the survey, but aims at combining the results into the sets of problems that became evident and most significant in the course of the empirical study. It is also necessary to acknowledge that the empirical data does not pertain only to the problem of a national judge vis-à-vis European Union law. As the reader will note, it concerns the functioning of the Polish civil judicature in general, since many problems have their roots in the organisation of the judiciary system, in the way it is managed and administrated. In addition, it is shown how the constitutional framework, the national judicial culture, and the system of legal and judicial training, to name only the most crucial aspects, may affect the functioning of national judges in the context of EU law. It should be emphasised that judges—like anyone else—are human beings, which partly accounts for the common contradictory opinions and views on EU law that they shared during the empirical study. In fact, the vivid presence of the human factor has proven to be one of the most challenging aspects of the empirical study. In this regard, it should be reiterated that the entire analysis is conducted on the basis of the personal responses made by judges to the individual inquiries. These may seem self-evident, and absorbing or amusing, but at times also odd and paradoxical.

2. Knowledge of EU Law: *iura novit curia?*

Various aspects of the knowledge of European Union law and the way judges acquire that knowledge were tested and explored in the survey. An examination of the most troublesome and perplexing aspects of conveying knowledge about European Union law was also attempted. It should

² See *supra* note 67 in Chapter 1 for the definition of triangulation.