

## Researching Justification Texts of a First Instance Court: from Assignment to Results and Reporting

PHILIP LANGBROEK\*  
TINA VAN DER LINDEN\*

Langbroek, P., Linden, T. van der, 2014. Researching Justification Texts of a First Instance Court: from Assignment to Results and Reporting. *Oñati Socio-legal Series* [online], 4 (5), 1071-1098. Available from: <http://ssrn.com/abstract=2533325>



### Abstract

Court decisions are reasoned to legitimize them. Lay people seem to understand little of the work of the courts. One of the questions for court administrators and judges is: for whom do judges write their judgments? Is it possible to analyze judicial justification texts with a view to the audiences they address? We answered that question by developing a methodology for the analysis of judgment justification texts, investigating judicial writing behavior. This paper focuses on the methodological hurdles we had to take and the mistakes we made and had to correct. Research reports in all articles on socio-legal research offer a positive and linear description of the research. This article wants to show that trial and error during the research process were inevitable and maybe could have been avoided if we would have had more experience with this type of research. We hope students and other researchers may profit from our experience.

### Key words

Developing quantitative research; justification text; research process; judicial writing; judicial evaluation

### Resumen

Las decisiones judiciales se razonan para legitimarlas. Los profanos en la materia parecen entender poco de la labor de los tribunales. Una de las preguntas a administradores de tribunales y jueces es: ¿para quién redactan los jueces sus sentencias? ¿Es posible analizar los textos de justificación judiciales desde la perspectiva del público a quien se dirigen? Hemos respondido a esta pregunta mediante el desarrollo de una metodología para el análisis de textos de justificación judiciales, investigando el comportamiento de la escritura judicial. Este artículo se

---

Article resulting from the paper presented at the workshop *Evaluating Judicial Performance* held in the International Institute for the Sociology of Law, Oñati, Spain, 9-10 May 2013, and coordinated by Francesco Contini (National Research Council of Italy), Jennifer Elek (National Center for State Courts), Kathy Mack (Flinders University), Sharyn Roach Anleu (Flinders University) and David Rottman (National Center for State Courts).

\* Philip Langbroek is professor of Justice Administration and Judicial Organisation at Utrecht School of Law, Achter Sint Pieter 200. 3512 HT Utrecht. The Netherlands. [p.m.langbroek@uu.nl](mailto:p.m.langbroek@uu.nl)

\* Tina van der Linden is assistant professor at the Institute for Jurisprudence, Constitutional and Administrative law at Utrecht School of Law, the Netherlands. Achter Sint Pieter 200. 3512 HT Utrecht. The Netherlands. [m.vanderlinden@uu.nl](mailto:m.vanderlinden@uu.nl)



centra en los obstáculos metodológicos que tuvimos que sortear y los errores que cometimos y tuvimos que corregir. Los informes de investigación en todos los artículos de investigación sociojurídica ofrecen una descripción positiva y lineal de la investigación. Este artículo quiere demostrar que la prueba y el error eran inevitables durante el proceso de investigación eran inevitables, y podrían haberse evitado si hubiéramos tenido mayor experiencia en este tipo de investigación. Esperamos que estudiantes y otros investigadores puedan beneficiarse de nuestra experiencia.

**Palabras clave**

Desarrollo de investigación cuantitativa; textos de justificación judiciales; proceso de investigación; escritura judicial; evaluación judicial

**Table of contents**

1. Introduction.....	1074
2. Developing the research framework .....	1074
3. From theory to model.....	1075
3.1. Theory .....	1076
3.2. Functions and audiences of justification texts .....	1076
4. Sampling.....	1078
5. Operationalization, reduction of variables and scoring .....	1079
5.1. Dependent variables.....	1080
5.2. Independent variables .....	1083
5.2.1. Case characteristic: Legal area .....	1083
5.2.2. Case characteristics: conflict .....	1083
5.2.3. Case characteristics: case management.....	1084
6. Analyses and results .....	1086
6.1. Number of words .....	1086
6.2. Complexity of justification texts (Douma) .....	1087
6.3. Juridical intensity: references to case-law and to articles in legislation .	1087
6.4. Occurrence of moral considerations .....	1087
6.5. The relative influence of the variable legal area on text characteristics.	1088
7. Conclusion: answering the research questions .....	1088
8. Reporting .....	1088
9. Discussion .....	1089
9.1. Discussion on research outcomes .....	1089
9.2. Discussion on the research process: lessons learned .....	1091
References : Literature.....	1092
Appendix 1: results of statistical analysis. ....	1096

## 1. Introduction

In this paper we describe the process of conducting an evaluation research project on the justification texts of a district court in the Netherlands. Next to that, we summarily describe the results of this work. We begin with the process of developing the research, the intervention by the Council for the Judiciary, the redesigning of the research, the development of the concepts of text characteristics and case characteristics, the development of a theory based model, the operationalization of the concepts, the data collection, the analysis, the results and the reporting. Thus, we want to show that the process of empirical evaluation research on the assignment of an institutional player in a judicial context can be very problematic, both from cooperation and methodology perspectives. It is very well possible to present the outcomes and method of such research as a logical, linear process and as a success. But in practice, at least in this judicial environment, researchers have much less control over their research practice than positive research presentations suggest. We finalize this paper with a discussion.

## 2. Developing the research framework

This research was commissioned in a complex institutional context. Within the district court an internal debate had been going on, on how to write judgments, so that lay people could understand them. Judges were convinced that there are important differences in writing style between the different legal jurisdiction areas served by the court (criminal, administrative, civil – trade and family, and small claims/small crimes). Those jurisdiction areas also function as organizational divisions, called 'sectors'.

Based on the ongoing discussion in the court on how to write good judgments, on request of the board of the court, we designed a qualitative empirical research project (Maxwell 2012) aimed at listing the values and purposes judges have in mind when they write a judgment. This was done in close interaction with some leading judges of the so-called 'Justification' project.<sup>1</sup> The original research design we developed was as follows. We wanted to select four 'typical' judgments from each legal area and present them to judges of the five other legal areas. We would have the judges from the civil law sector read judgments from the criminal law sector, from the administrative law sector and so on. After a round of initial interviews we would set a standardized question list and make an inventory of values explicitly or implicitly adhered to by the judges concerning the writing of justification texts.

We would conduct 16 interviews per sector in order to map the essentials of writing judgments from the judicial perspectives. This would be input for the courts' discussions, which could also function as a final check on our results and interpretation.

However, the Council for the Judiciary, the body administratively steering and overseeing the courts in the Netherlands, and especially its research and development department, did not agree to our research plan. The R&D department of the Council for the Judiciary did not want qualitative research, it wanted a quantitative empirical research design, which was quite a challenge for us as researchers working in a law faculty.

Thus, the project – as far as the research was concerned – was to a large extent taken out of the judges' hands. The aim of the research still was to develop information to feed the debate within the district court about writing justification texts, but it should also be designed as a test of the hypothesis that the differences in judgment texts between court sectors stem from differences between the sectors

---

<sup>1</sup> In Dutch: 'mo10veren' – 'just10fy'.

– their “local cultures”. This was a double aim, and it would prove difficult to serve both aims.

In the exchange with the representative of the Council for the Judiciary, the following research questions emerged:

1. Are there differences between the written justifications of court decisions for different legal areas?
2. Are there other possible causes for differences between written justifications of court decisions?
3. Which causes are more important for differences in text characteristics of written justifications; legal area or other case characteristics?

Research commissioned by a public body in the Netherlands is usually backed by a guidance committee. Such a committee usually consists of a representative of the principal of the research, like the Ministry of Justice or the Council for the Judiciary, and representatives of organizations with an interest in the research. On the one hand committee members can open doors and facilitate access for researchers. On the other hand, they can also impose restrictions on the research, when it comes to developing research questions and the way conclusions are formulated. This demands quite some flexibility from researchers who have to guard their academic reputation but also serve the interests of the organization hiring them. The development of this research is an example of a difficult interaction process in this regard.

The members of the guidance committee for our research were judges from the district court, plus an academic organization psychologist, and was chaired by a very experienced judge from another court. The representative of the Council was an experienced researcher, with a strong preference for quantitative empirical research.

The judges had little understanding of the methodological issues related to quantitative empirical research, and the validity issues we had to solve. The role of the representative of the Council for the Judiciary was to enhance the development of the quantitative research, and he was active when we developed the codebook, and after the data collection. The model was constructed in lengthy and difficult conversations with this representative, *after* the data collection took place.

During the development of the research we also had to cope with the departure of the sociologist of law in our team. Finding a replacement was not difficult, but the methodology professor we were happy to engage had not been involved in the research process from the beginning and was also not familiar with the judicial field. Therefore also for her, the research process was a process of getting to know how the judges and the court actually worked. Because of those developments, the research process was full of tensions. The judges could do little, as the research drifted away from their original intentions, they were no longer the principal of the research.

### 3. From theory to model

We had to focus on the justification texts. Our district court is a court in the Netherlands, as a part of a European, continental law system, in the French tradition. The relation of judges with the law in the Netherlands therefore is quite different from the relation with the law of Anglo Saxon judges (Merryman and Pérez-Perdomo 2007). Consistency of judging is an issue as a part of the ‘Quality program’ of the Council for the Judiciary. This is not about the usual coordination mechanism of appeal and cassation, but – among other aims - about organizing that first instance courts come up with similar judgments in similar cases. To that end, for example, the courts have agreed on standards on how to apply rules of procedure in the codes of civil and administrative procedure. Also national

standards for alimony money and divorcing, and for damages after involuntary dismissal from work have been set by judicial agreement. Sentencing guidelines of the public prosecutions office – guidelines for prosecutors to demand punishments in court – are being applied by the courts in criminal cases. Legal certainty and equal treatment are dominant values in Dutch judicial administration. The context of this research is the idea that public trust in and legitimacy of the Judiciary in the Netherlands are at risk, because there supposedly is a gap between the judiciary and the people (Elffers and Keijser 2008, Keijser *et al.* 2008, Brink 2009, Keijser and Elffers 2009).

Because there was not so much literature on text analysis of European continental judgments, we had to work from a narrow theoretical basis.

### 3.1. Theory

Most of the research in the field of empirical text analyses of judicial decisions has been done in the USA. Traditionally, justification of court decisions primarily is the domain of professional lawyers. There are many juridical analyses of justifications of court decisions (Ross 2002, Cserne 2009, p. 9-30). They focus on case-law of the highest courts primarily. Lawyers in civil law systems assume that first instance courts follow legislation and the lead of the case-law of the highest courts (Merryman and Pérez-Perdomo 2007). Especially in the USA, many empirical studies have been conducted to explain the content of opinion texts of judges of that court, for example checking for ideological bias (Bailey and Maltzman 2008, Bartels 2009), the relevance of precedent (Schneider 2001, Niblett 2010, Cross *et al.* 2010), references to founding fathers (Corley *et al.* 2005) and so on. Several empirical studies have been done on the clarity of court decisions (Owens and Wedeking 2012, Owens *et al.* 2013). Approaches in the latter two studies also used automated text analysis, but they were published after we conducted the current study.

Attention for the decisions of first instance courts is rare. Exceptions are for criminal courts in the USA (Huber and Gordon 2004, Scott 2006), and for consistency of sentencing (Ostrom *et al.* 2008). For the Netherlands, see Ippel and Heeger-Hertter (2006), Willemsen *et al.* (2009); and on timeliness of judicial decision-making, Eshuis (2007). However, there certainly is also attention for judicial reasoning (Engel 2004, Alexander and Sherwin 2008) and legal argumentation (Plug 2003, 2012). The available literature on Dutch courts as organizations identifies differences in attitude and application of rules of procedure between court divisions as cultural differences. Judges also perceive the other court divisions as 'different' (Ippel and Heeger-Hertter 2006, Boone *et al.* 2007).

Research on the best way to communicate justifications of court decisions is also scarce. We know a few Dutch publications by Malsch *et al.* (2004, p. 1112-1117), Malsch *et al.* (2006, p. 365-366), Malsch and Manen (2007) and Komter and Malsch (2012, p. 408-420). The audiences of court decisions are often ignored. An exception is a report on the effects of judicial opinion language on acceptance of the decisions as precedent in federal courts in different circuits in the USA (Hume 2009). Outstanding, in this respect is the work of Lawrence Baum on audiences of court decisions, who tries to explain what audiences judges address, and how this may affect judicial opinion writing (Baum 2006). The research we conducted on the justification texts of a Netherlands first instance court is similar, but does not focus on the content of the decision. Instead, we focused on measurable characteristics of the justification texts, regardless the content of the decisions.

### 3.2. Functions and audiences of justification texts

The functions of the justification of court decisions are to legitimize the decision, to persuade the party judged against, and to show the congruence of the court decision within the larger legal system. Furthermore, advocates want to see what

the judge did with their arguments. We can relate these functions to the different functions and audiences of the justification texts (the parties – ordinary people, businesses, professional lawyers, the general public). Some cases have a much more legal character than others, like patent cases compared to guardianship cases, thus, the justification texts of court decisions in such different cases can be expected to reflect that, as the primary audience in a patent case most likely will be the legal councils and the primary audience in a tutelage case most likely will be the parents and (conditionally) the child at stake. If the court adapts justification texts to the different audiences of different cases, this would be an indication that the court tries to live up to demands of public accountability for court decisions. Convincing the parties and the superior courts also demands that the justification fits the legal system. In this respect, advocates mediate between the law, the judge, and the parties. Judges mediate between the law and the parties in a case. Judges and advocates therefore fulfill an *explanation* function (Malsch *et al.* 2006, p. 365-366, Malsch and Manen 2007).

Apart from explaining the law (the legal explanation), the justification should also show that the decision taken is fair and just.<sup>2</sup> This can be done by reference to *morals* in the justification text (moral explanation), not only to convince the parties but also to convince the public and politicians. In this sense, the press and wider media function as an intermediate between the courts and the public and between the courts and politicians. When doing so the press and the wider media try to create *news value*.

The *explanation* function serves the legitimacy of court decisions by enabling *control* on the content, by means of appeal and Cassation (i.e. the Dutch supreme court or court of last instance) by parties and their counsel, and by means of comments and proposals by legal academics and by politicians (Malsch *et al.* 2006, p. 365-366, Malsch and Manen 2007). Thus, different audiences are being served. They are policymakers and media journalists, but especially lawyers in their different qualities of advocate, fellow judges, appeal court judges and academics. Advocates should be able to assess whether or not it is worth the effort to appeal to a higher court. Policymakers want to be able to evaluate whether a court decision should lead to modification of existing legislation. Therefore, justification texts also serve a control function, related to checks and balances in a constitutional democracy. This explanation function also has a different function: presumably, judges as professionals want to show they know how to write a well-reasoned judgment – this is about their professional esteem (Schauer 2000).

By formulating a justification, the judges develop insight in the case and in the way the law should be applied. We call this the *inculcation* of the reasoning for the judge writing the justification text. To that extent, judges are also their own audience.

Lastly, it should be mentioned that audiences of court decisions are not separate groups, but consist of overlapping groups. We are now able to distinguish the intended audiences of justification texts by the characteristics we expect to identify in those texts, as summarized in Table 1.

This (eventually) resulted in a theory of functions of justification texts, the intended audiences, the expected text characteristics and a first operationalization of text performances in text characteristics.

---

<sup>2</sup> Opinions of economists that first instance court decisions should not be motivated at all, or only in a standardized way for efficiency reasons, ignore the fact that the parties must be convinced (Bar Niv and Safra 1999).

Table 1. Functions of justification texts of court decisions and intended audiences

Intended Audiences	Function of the Justification text	Expected characteristics of justifications of court decisions	Text Characteristics Measured as:
Parties	Decision Explanation	Comprehensibility Moral explanation Shorter texts	Text Complexity, Occurrence of moral considerations, number of words
Professional lawyers: Advocates	Explanation, Control	Legal explanation Longer texts	Number of references to case-law and to legislation, number of words
Judges	Inculcation; Explanation, Control	Legal explanation Longer texts	Number of references to case-law and to legislation, number of words
Academic Lawyers	Explanation, Control	Legal explanation	Number of references to case-law and to legislation
Politicians	Control	Moral explanation and legal explanation	Occurrence of Moral Considerations, Number of references to case-law and to legislation
Media / general public	Explanation, Control	Moral explanation, Comprehensibility Shorter texts.	Text Complexity Occurrence of Moral Considerations, number of words

We were only able to develop the model of Figure 1 below, at the end of the project, after the data collection, when we actually had realized what variables we actually could use for our analysis and which not. We explain this after the presentation of our initial model (see section 5).

#### 4. Sampling

For the actual sampling we had to cooperate closely with clerks of the different court sectors, who were responsible for the storage of judgments in the electronic archives. We were not in all sectors allowed to have our own hands on the desktop keyboards. In those sectors, we instructed those persons as well as we could, but we were not certain that the case selection was as random as we wanted.

The cases were selected by means of a stratified random sample. For the sampling we used case numbers from production lists over 2009 and 2010. The stratification was oriented to a representative mix of procedures and specific subjects per legal area within the divisions of the district court. We pre-selected cases with decisions that were motivated content-wise and in writing. Oral court decisions (see par. 5.2) were included in the sample only as far as they were elaborated in writing after hearing. With the lists we tried to retrieve the selected word files of the court decisions from the courts' electronic archives. We found the e-archives not to be complete for all legal areas. We responded by asking the responsible court clerks to inquire with the responsible secretaries and by otherwise retrieving the court decision with the next case number from the e-archive within the indicated category. The sample consisted of 852 cases.

This sample was then merged with a collection of 147 cases with media interest. They were collected by checking national and local media on the Internet. The cases with media interest *within the sample* were removed in order to avoid



overlapping counts and within the sample 842 cases remained. In total we had 992 cases. Because the financing system encourages the court to merge cases from a case management perspective, leading to one judgment for sometimes 10 or even 20 cases, we had to remove recurring cases with different case numbers but with the same content from the database. We ended up with 958 unique texts.

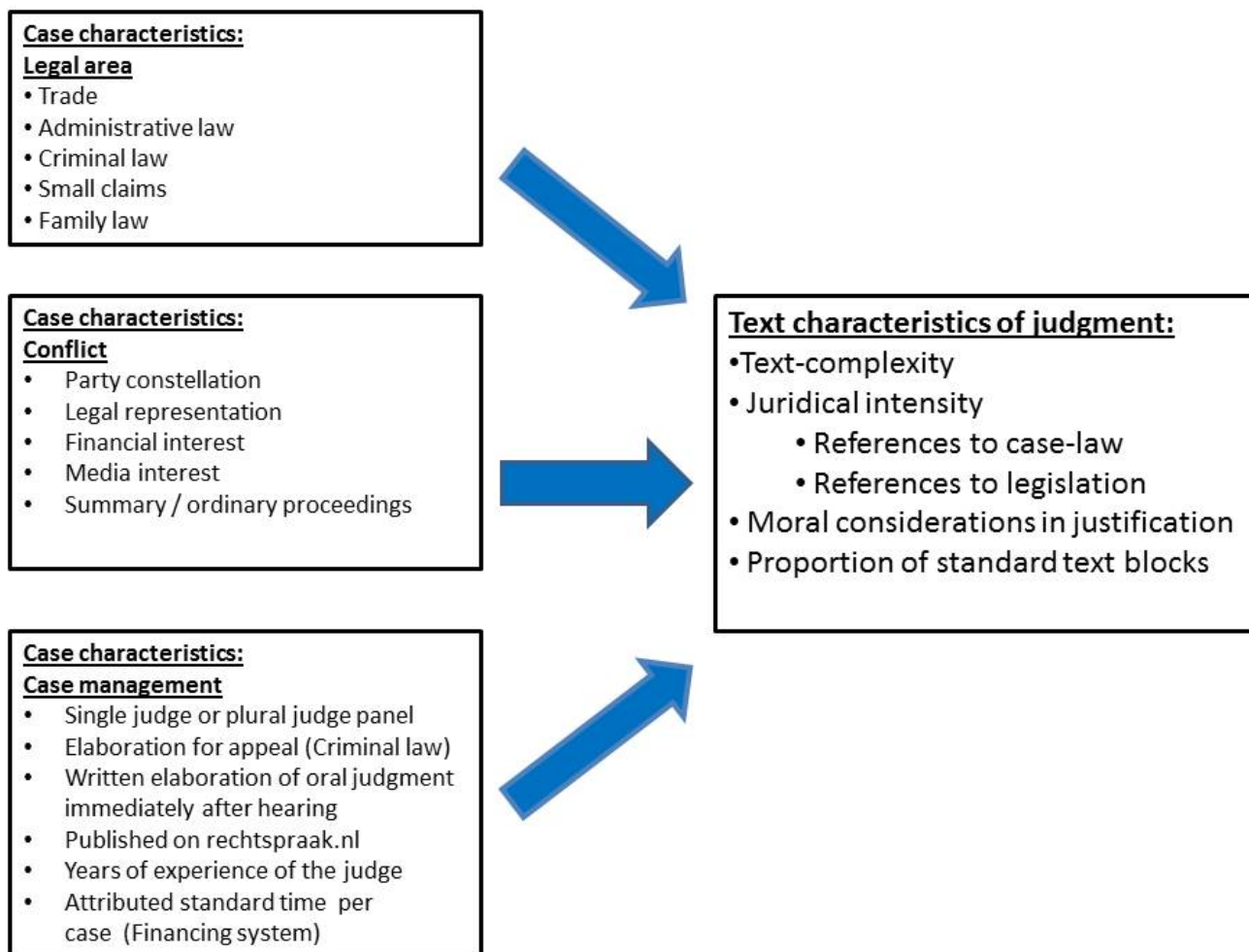
### **5. Operationalization, reduction of variables and scoring**

First we held interviews with judges. These interviews were used to develop a valid codebook to enable our investigations of the text, legal area, conflict- and case management characteristics of written justifications of court decisions. Then case characteristics and text characteristics were scored from court decisions, sampled in word files from the electronic archives of the court. When we developed our code-book we had 59 variables. In the end, we used only 16. We had to reduce complexity due to different circumstances concerning the sampling, restrictions set by the court and difficulties with reliable scoring of variables in accordance with the code-list.

We developed an instruction with the codebook, with scoring pilots on a random set of 20 court decisions from [www.rechtspraak.nl](http://www.rechtspraak.nl), the website where the Dutch Courts publish selected judgments. The scoring pilots functioned as training in order to make certain that scoring choices were made in the same way by all researchers, and thus to guarantee reliability of data collection. Below we explain the obstacles, difficulties and solution per variable and we first present our initial model in Figure 1 and later we present our eventual model in Figure 2.

The process of reducing variables took place during the sampling, scoring and analyzing processes. We had to mold our data to workable sizes. Our first model was the following:

Figure 1. Initial Research Model Case Characteristics and Text Characteristics:



Of course, when developing this model, the question was if it would be possible to come with a meaningful interpretation of the outcomes of statistical analysis, relating text characteristics to intended audiences of justification texts.

Below we describe the definitions within this model, the scoring problems and our solutions, resulting in the final model (presented in Fig. 2 below).

### 5.1. Dependent variables

The dependent variables are the text characteristics we measured. We assume that those text characteristics are related to an intended audience, even if scores on text characteristics may indicate there are several intended audiences.

*Text complexity.* A text will be more accessible to more people if it is written in simpler language with minimal use of legalese. Juridical language is not known for its simplicity. The prime audience of a justification text is the parties, but also the public and the media will find it easier to comprehend a text if it is written in simple language.

Text complexity is measured by using the calculations of readability testing. Readability tests of texts are based on a calculation including the number of sentences, the average number of words per sentence and the average number of

syllables per word. They were especially developed in the USA for American English, for example the Gunning-Fog and the Flesch Kincaid readability tests.<sup>3</sup>

This test was adapted to the Dutch language, because Dutch language contains more long words compared to English. Our measure is called the 'Douma' after the engineer who developed it. The Douma was applied to only the justification parts of court decisions by cutting and pasting the text from the word files into the window of: <http://standards-schmandards.com/exhibits/rix/>. Douma also has scores between 1 and 100, where 100 represents the simplest texts, and 1 the most complex texts.

These 'readability scores' have been developed to match texts with the reading level for children attending primary and secondary schools in the 1950s and 1960s. Of course, the intended readability is not actually being measured by this variable (Oosten *et al.* 2010). It does not allow conclusions on the comprehensibility of texts. It is just an indication of the ratio of the number of syllables per word and the number of words per sentence.

We assumed that scoring this variable would not be problematic. But after we had reported our findings to the court, and had offered an article about this research to a peer reviewed journal, we discovered inconsistencies in the scoring on this variable. When preparing a presentation for judges, going back to our original dataset, we looked for judgments with extreme high or low scores for text complexity. The high scores were fine, but there seemed little deviance compared with the texts with the lowest scores. Trying to reproduce the Douma scores for those cases, it appeared that the scores were clearly wrong. Connecting with the former research assistant who had scored the judgments in cases with media interest, it showed that he had not been aware of the drop down-menu below the scoring window, and had actually used the Flesch-Kincaid measure. Combining Flesch-Kincaid and Douma scores is not acceptable. The initial results: 'justification texts in cases with media interest are significantly more complex than other cases' were wrong, because the Flesch-Kincaid for Dutch results in much lower scores.

So, we had to announce that the report we had delivered was wrong, and to withdraw the article, and apologize to the court... and correct our scoring and do our analyses and reporting again. This experience of course made us check and recheck the scores we had used.

When we discussed the initial outcomes with judges and colleagues, a recurring question was, why didn't you involve the number of words /judgment into your model? The answer was, we didn't think this very relevant, but in the interactions we were persuaded that there may be interesting relations between case characteristics and the number of words which may be relevant for the comprehensibility of justification texts. We had to do the scoring on text complexity anew, so we added 'number of words' to the dependent variables in our model.

#### Number of words

Shorter texts will be better accessible for non-lawyers and journalists, but are likely to have less juridical significance. Juridical significance will need more words. The justification texts with more references to legislation and to jurisprudence will have more words than justification texts with less or no references to legislation or jurisprudence at all. Longer texts therefore will have a more explicit juridical audience. Furthermore, complex cases will need a longer justification text.

The files that were retrieved from the courts' archives are Microsoft Word files. Microsoft Word shows the word count.

---

<sup>3</sup> The Flesch Kincaid readability test uses the following algorithm:  $206.835 - 1.015 \times (\text{number of words/number of sentences}) - 84.6 \times (\text{number of syllables/number of words})$ . This results in a number between 0 and 100, indicating that a higher score refers to better readability.

### Juridical intensity

The justification of a court decision is directed at creating a normative basis for the decision in terms of establishing the facts and the applicable law. Applicable law consists of legal rules and leading case-law of higher courts and colleagues.

The more juridical the character of the justification text, the more likely it is that the text has been molded to an audience of professional lawyers. We distinguish between the number of references to case-law and the number of references to articles in statutes and international treaties. In addition, there may be several audiences. Professional lawyers (advocates, judges, academic lawyers) and policymakers are audiences for the juridical justification of court decisions.

We used two indicators for juridical intensity:

- The number of references to articles in statute acts, regulations and treaties. Multiple references to the same article were counted according to the number of their occurrence.
- The number of explicit references to Dutch and European case-law, multiple references to the same court decisions were counted according to the number of their occurrence.

The scoring of these variables was not complicated and following several checks, accurate. The number of references to case law of the European Court of Human Rights and the European Court of Justice was 12 in the entire sample, so we dropped number of references to transnational courts as a separate variable and merged it with the variable 'references to national jurisprudence'.

### Moral considerations

By moral considerations, a judge may try to reach certain audiences. We think that when using moral considerations, judges turn to other audiences than the parties, also when these considerations are superfluous for the justification of the court decision. For example in a family case: "A child should feel safe and secure in the family where it grows up, and therefore it should know that it may stay, also when it sometimes behaves annoyingly." And in a criminal case: "Thus the victim was reduced to an object and a commodity. A worse way of contempt is almost unthinkable." Sometimes, also apart from the justification of the court decision, the judges give parties advice in the judgment.<sup>4</sup> Audiences of moral considerations are the parties, but also the general public, media and politicians. Thus, we also consider the presence of moral considerations in a justification text.

We coded moral considerations as present = 1 and absent = 2.

The scoring of this variable was complicated, but by insisting that the specific text parts were copy pasted into the database with a 'present', we could and did check them. The result is that we scored considerations that were accepted as 'moral' by the research team. Later checks following the Douma-scoring debacle confirmed this.

### Standard texts

We wanted to measure the use of standard texts in jurisprudence. The courts write judgments in Microsoft Word. For judgments they use different document designs (macros). And within those frames they can insert standard texts. For

---

<sup>4</sup> E.g. in a summary proceedings case where a convicted pedophile who had done his time in prison tried to find a place to live. Mayors of several municipalities had issued orders for the pedophile not to rent an apartment in their municipality. When charging one of those 'banning orders' the judge declared them to be illegal because of abuse of powers and explained (to all mayors and the general public) that also a convicted pedophile, when released from prison, has a right to live somewhere in the Netherlands. 3 December 2009, LJN BK5246.

administrative summary proceedings, for example, they will use a text stating the meaning of the relevant rule of procedure:

According to art. 8:81 General Administrative Law Act, if an appeal has been lodged with the district court against a decision, or if an objection or administrative appeal has been lodged prior to a possible appeal to the district court, the provisional relief judge of the district court that has or may come to have jurisdiction over the main action may, on application, grant provisional relief if, having regard to the interests involved, the situation requires immediate relief.

This text can be found in all administrative summary proceedings judgments in the Netherlands. Standard text blocks are used in all legal areas. It is considered helpful in writing judgments more efficiently. But the researchers and research-assistants who scored the judgment texts were not able to recognize and score standard texts in the same manner for all legal areas. It turned out that there are huge collections of standard text blocks, and for the untrained eye, they are difficult to recognize. We couldn't score this reliably and therefore we had to drop this variable.

### 5.2. *Independent variables*

We discern the following categories of independent variables concerning the case: 'legal area', 'conflict characteristics' and 'case management characteristics'.

#### 5.2.1. Case characteristic: Legal area

Next to creating a theory of the functions of characteristics of justification text, we had to develop the factors that would explain the differences in text characteristics. 'Court sector' was one of them. That appeared to be the next hurdle to take: the district court was an organization in transition. Originally they had five courts sectors, but during our research they were reorganized into four. The small crimes/small claims sector was to be split up between the civil, criminal and the new family sectors; a family and supervision sector was to be installed which originated from the civil law sector. We therefore had to refrain from taking the organizational unit from where the case management and writing of the judgment as a point of departure.

The Court serves five legal areas that in part define organizational court divisions. Specialized units of judges and court secretaries deal with cases from a legal area (Langbroek 2007, p. 107). We therefore selected the legal areas 'small claims', 'criminal', 'administrative', 'trade' and 'family' as a point of departure. At the time of data collection, the court had 98,5 fte (full time equivalent) judges and 272 fte staff, of which 126 fte administrative support.<sup>5</sup>

We scored trade (1); administrative (2); criminal (3); small claims (4); family (5).

#### 5.2.2. Case characteristics: conflict

##### Party constellation

Party constellation relates to the experience, expertise and opportunities of parties with litigation a one-shotters or repeatplayers (Galanter 1974). We originally made a distinction between two parties, more parties, in conjunction with one-shotter versus repeatplayers. Our sample appeared to be too small to maintain this, so we ended up with a variable summarizing the information: only one-shotters, one shotter/repeatplayers and only repeatplayers.

We scored: only one-shotters (1); a repeat player opposes a one-shotter (2), or both parties are repeat players (3).

---

<sup>5</sup> Annual reports do not show absolute numbers of staff and production, only proportions. Those numbers were provided by judge B.J. van Ettehoven, 2 March 2011. For annual reports and numbers concerning the Netherlands' judiciary see (De Rechtspraak s.d.).

Checks revealed no mistakes but there were difficulties in making right decisions on repeat players concerning a bank, an insurance company and a large real estate company, and the youth care agency (= a party in child custody cases).

#### Legal representation

We also had a variable legal representation present/absent in combination with appellant or defendant. We had to drop this complication. Initially we choose for 'absence or presence of legal representation' in a case, but we changed that into the number of lawyers as legal representation in a case, as we reasoned that more lawyers as legal representation in a case would lead to a higher juridical intensity of justification texts in judgments.

We scored the number of lawyers as legal representation in a case: 0, 1 or 2 .

#### Financial interest

We have only taken into consideration amounts of Euro that were explicitly mentioned in the justification text. We did not count fines, court fees and litigation costs. For our analysis we used: € 0 = 0, € 0-5000 = 1, € 5.000-50.000 = 2 and > € 50.000 = 3.

#### Media interest

With 'media interest' we mean there was attention for that particular case in a newspaper, on radio or television. We did not take internet blogs into account. Judges are informed by the press office of the court if there is media interest for the case, for example in case of a court hearing. Judges will also know journalists in the audience in the courtroom. One-hundred and forty seven cases were identified based on media publications in 2009 and 2010. These cases were downloaded from [www.rechtspraak.nl](http://www.rechtspraak.nl), as all decisions in cases with media attention are published there.

Media interest was coded as 1, absence of media interest was coded as 2.

#### Ordinary proceedings and summary proceedings

A party filing a case can choose the type of proceedings they want to follow, except for criminal proceedings. The judgment texts show very clearly what type of proceeding is at hand.

Summary proceedings was coded as 1, ordinary proceedings was coded as 2.

#### 5.2.3. Case characteristics: case management

##### Single judge panel and plural judge panel

The number of judges and the type of proceeding can be recognized from the judgment text. This distinction follows rules of procedure and court policies. Single judge panel cases were coded as 1, plural judge panel cases were coded as 2.

Because summary proceedings are always presided by a single judge, summary proceedings overlap entirely with the single judge panel cases. We therefore choose to leave the variable single judge panel and plural judge panel out of the regression analysis.

#### Written elaboration of oral court decisions immediately after hearing.

Sometimes in single judge cases a decision is given orally immediately after hearing. The clerk makes a 'note on the oral court decision'. For example, in single judge panel criminal cases the justification is given orally, but this is not elaborated in the minutes, they only contain the court decision. When appealed against this decision, the court will elaborate the justification in writing. In family law and administrative law cases the justification of the orally given decision is usually elaborated in writing after hearing. Oral court decision is coded as 1 no oral court decision is coded as 2.

During the initial scoring 70 of the small claims cases were identified as 'written elaboration of oral court decisions immediately after hearing'. The research assistants had mistakenly taken the oral presentation of the court decision in public (which is a standard procedure, also weeks after the hearing, and noted in the justification text as: 'this decision has been read out loud in the court at ... date'). We discovered this doing checks following the Douma scoring debacle and corrected the scores.

#### Elaboration for secondary appeal

This variable could be identified for criminal law cases only. Elaboration for appeal is coded as 1, no elaboration for appeal is coded as 2. This variable overlaps with 'written elaboration of oral court decisions immediately after hearing' in criminal cases.

#### Published on rechtspraak.nl

Judges told us that cases of particular interest would be published on [www.rechtspraak.nl](http://www.rechtspraak.nl), the central website for the courts in the Netherlands. The cases can be sent to the editors of the jurisprudence database by the court and by judges. We expected the judgment texts to be longer, and more complex with a higher juridical intensity. However, this presupposes that a judge knows, before writing the actual judgment, that the case may be fit for publication on [www.rechtspraak.nl](http://www.rechtspraak.nl). We had no way to check if judges knew that a case was fit for publication for this presupposition before the judgment was written. All cases with media interest (147) are also published at [www.rechtspraak.nl](http://www.rechtspraak.nl) (270 cases of our sample are published on [www.rechtspraak.nl](http://www.rechtspraak.nl)) and judges do know if there is media interest in a case. Publication on [rechtspraak.nl](http://www.rechtspraak.nl), therefore could not be operated as a valid variable. We therefore dropped this variable from our model and maintained the variable 'media-interest'.

#### Years of experience of the judge

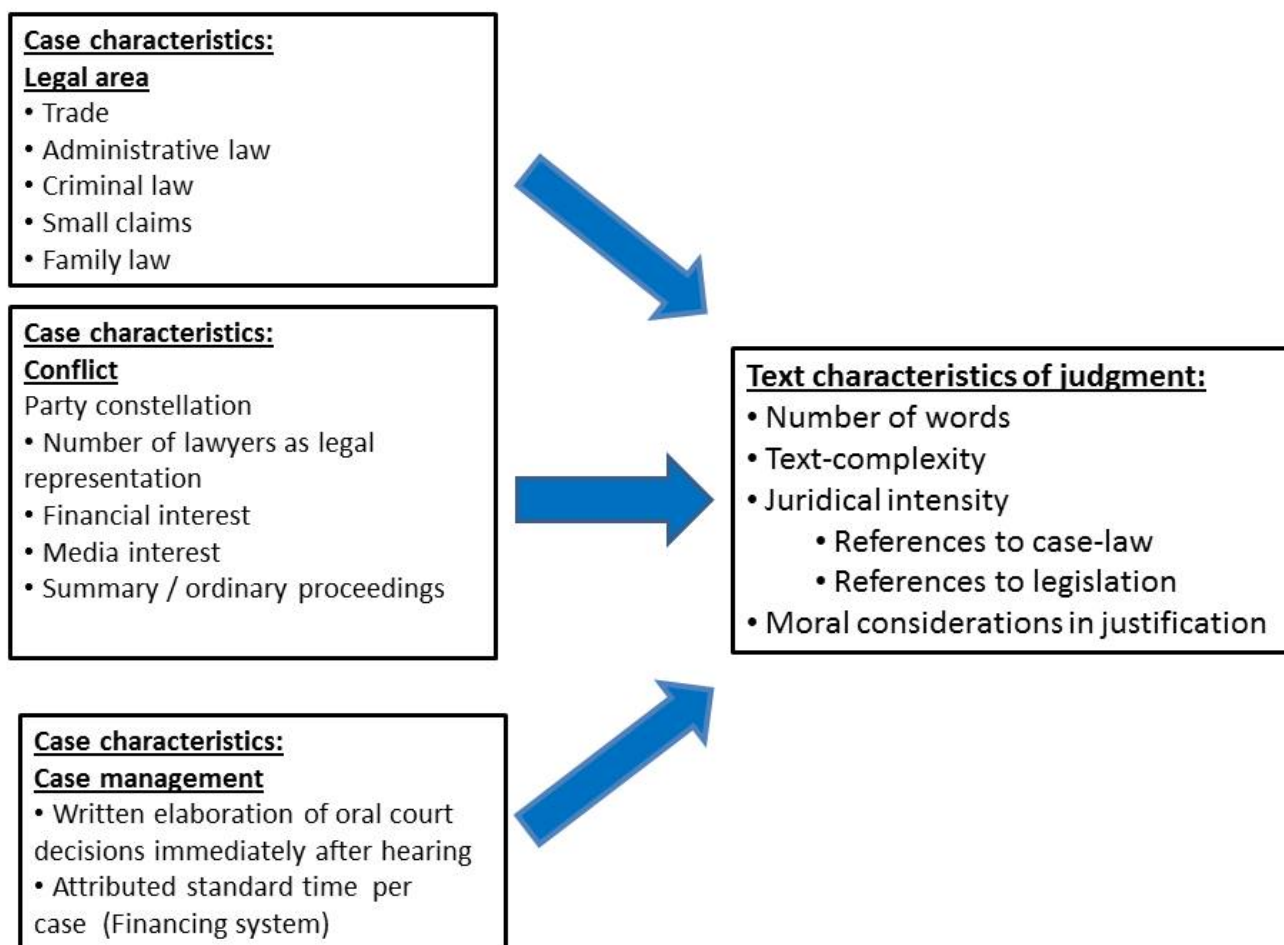
We guessed that an experienced judge may be better able to adapt the justification text to address different audiences compared to less experienced judges, also in complex cases. The court however did not want to share this information with us, so we had to drop this variable.

#### Attributed standard time

According to the financing system of the courts, cases are attributed a certain amount of time in minutes. This can vary from 90 minutes up to 1500 minutes per case. This attributed standard time per type of case is based on time registration research by the Council for the Judiciary. We divided the attributed standard time categories into 3: 1= low, 0-150 minutes; 2= middle, 151-400 minutes, and 3= high, > 400 minutes.

Our final model based on the experiences described above is displayed in Figure 2.

Figure 2: Final model used for analysis



## 6. Analyses and results

First, we conducted a MANOVA to examine the differences in mean scores in the text-characteristics between the five legal areas. Then, we conducted t-tests and ANOVAs to examine differences in text characteristics between case characteristics. Next, using regression analyses, we examined which case characteristics have the strongest influence on the text characteristics. Finally, we performed two MANOVAs, for text characteristics and case characteristics, one with and one without legal area as a fixed factor.

The outcomes of this study are complex. Interpretation of the outcomes of the statistical analysis is difficult, even though some of them are robust in terms of statistical significance. The statistics are presented in Tables 1-4 in the appendix.

### 6.1. Number of words

There are significant correlations between number of words and the juridical intensity. Longer texts have more references to legislation and to case law.

Number of words is significantly and positively related to legal area<sup>6</sup>, party constellation ( $\beta = .20^{***}$ )<sup>7</sup>, number of lawyers as legal representation ( $\beta = .23^{***}$ ), and especially to the amount of standard time for a case ( $\beta = .27^{***}$ ).

<sup>6</sup> Table 1, Appendix 1.

<sup>7</sup> \* $p < .05$ ; \*\* $p < .01$ ; \*\*\* $p < .001$ .



The more time the court has available for a case, the longer the judgment is. The complexity of cases with larger number of words is reflected in the number of lawyers and the party constellation. Apparently, longer texts are related to cases with repeat players and more lawyers involved. Longer justification texts are more likely to have a professional legal audience. To a lesser extent media interest will also result in longer justification texts ( $\beta = .15^{***}$ ).

Table 4 in Appendix 1 shows that case characteristics explain 32% of the variance in the number of words in judgments.

### 6.2. Complexity of justification texts (Douma)

Text complexity shows overall a small variety of means (between 7 and 0 points on a scale of 1-100). Our model did expect differences, but they are very small.<sup>8</sup> Although statistically significant, we refrain from a further analysis of this variable.

### 6.3. Juridical intensity: references to case-law and to articles in legislation

The average number of *references to case-law* is lower than 1 per case. The results from Appendix Tables 2 and 3 show that the variance in references to case-law is limited and this limited variance is only explained by party constellation ( $\beta = .11^{**}$ ). The more references to case law, the more likely it is that repeatplayers in a case are an intended audience.

Table 4 in Appendix 1 shows that the variance in references to case-law can hardly be explained by differences in case characteristics (2% of the variance).

The variance of *references to articles in legislation* is best predicted by *party constellation* ( $\beta = .36^{***}$ ) number of lawyers as legal representation in a case ( $\beta = .10^{**}$ ) and *media interest* ( $\beta = .16^{***}$ ). The presence of repeat players increases the number of references to legislation, and so does the number of lawyers as legal representation and media interest in a case. For media interest, the number of references to legislation increases in all legal areas except in family cases. Other significant but less important predictors are: ordinary and summary proceedings and attributed standard time. The influence of attributed standard time is significant but very small. We can conclude here that the more references to legislation the more likely it is that repeat players are involved. The number of lawyers in a case also increases the number of references to legislation in the justification of the judgment, and so does media interest in a case.

It is difficult to draw conclusions here. In criminal cases references to statute acts in the justification of the punishment is mandatory. Public prosecutors are lawyers. On the other hand, the number of lawyers in a case for this variable is less relevant than several other case characteristics. Anyway, the more references to articles in legislation, the more likely it is that intended audiences are repeatplayers, lawyers and the general public via the media.

As shown in Table 4, Appendix 1, these variables explain 21% of the variance measured in the number of references to articles in legislation and international treaties. Here, also conflict characteristics are dominant in contributing to the explained variance.

### 6.4. Occurrence of moral considerations

The most evident predictor of moral considerations is media interest with a  $\beta = .41^{***}$ .

Within the case management characteristics *summary proceedings* ( $\beta = -.14^{***}$ ) decrease the occurrence of *moral considerations* compared to ordinary cases significantly. *Party constellation* ( $\beta = -.16^{***}$ ) and *legal representation* ( $\beta = -$

---

<sup>8</sup> Table 2, Appendix 1.

.12\*\*\*) also have significant effects and so does *Written elaboration of oral court decisions immediately after hearing*. ( $\beta = -.15^{***}$ ). The more repeatplayers in a case the lesser moral consideration is likely. The more lawyers as legal representation in a case, the lesser moral consideration is likely in a judgment. When an oral judgment immediately after hearing has been given, the written elaboration of that judgment is less likely to contain moral considerations than other judgments.

Therefore in judgments without media interest, the general public and non-lawyers in a case are less likely to be addressed with moral considerations. This is an indication that moral considerations are not as relevant for a legal audience as they are for media and the general public.

Table 4 shows that the case characteristics: *media interest and summary or ordinary proceedings* are relevant in explaining the variance of occurrence of *moral considerations*. Case characteristics explain 31% of the variance in the occurrence of *moral considerations* (see appendix)

#### 6.5. The relative influence of the variable legal area on text characteristics

We performed a MANOVA to examine the relative influence of the variable *legal area* on text characteristics of court decisions. When the independent variable *legal area* is implied in the MANOVA as a fixed factor, the independent variables explain 36% of variance in number of words, 19% of the small variance in text complexity, 9% of variance in number of references to case-law, 27% of variance in the number of references to articles in legislation and 41 % of the variance in the occurrence of moral considerations. This means that legal area is not so relevant for the variance in number of words and juridical intensity, but there is considerable relevance for moral considerations (criminal and family cases).

### 7. Conclusion: answering the research questions

There are significant differences in text qualities between legal areas. But the variable 'legal area' is not the most important factor to explain the text characteristics of justifications of court decisions compared to the other independent variables. Our results show that case characteristics are more important predictors of variances in text characteristics than the variable *legal area*. It should be noted however that the variable *legal area* does contribute considerably to the variance of occurrence of moral considerations. Next to that, conflict characteristics seem to be more important predictors of text characteristics than management/organization characteristics. Not the court internal processes but the conflict properties of the cases at hand seem the most important factors explaining the variance in text characteristics. It should be noted however that variances in text complexity are very small. Our model offers no explanation for this outcome. For that reason, we cannot conclude on the causes of the small variance in text complexity of justification texts.

### 8. Reporting

The reporting process was as tough as the research process. The initial representative of the Council for the Judiciary who acted as the principal of the research assignment retired before the project was concluded. He was replaced by another person with a different mindset and with experience in both empirical research and consulting. The initial report was delivered in September 2012. The Research and Development division decided not to publish the research in one of the Council's research magazines. The arrangement had been made at an earlier stage that the judges of the court would engage in an internal discussion on the research outcomes. As this debate was a part of the courts' internal affairs, we as researchers were not supposed to take part. The Council had the intention to publish the final report on-line, but we as researchers negotiated that they wouldn't

do it before we had published the research in a double blind peer reviewed journal. Following the mistakes on the initial scoring of text complexity, we notified the Council for the Judiciary and the district court, so that we redrafted our initial report and sent it to the Council for the Judiciary by September 2014.<sup>9</sup>

## 9. Discussion

### 9.1. Discussion on research outcomes

Our research shows that it is possible to develop criteria for an empirical evaluation of text characteristics of justification texts. But there are no absolute indicators to link a specific score on text characteristics to a specific *intended audience*. Only if we accept that relatively high scores on a specific text characteristic are an indication of a primary intended audience, the interpretation of the outcomes can be used as an instrument to improve communication qualities of justification texts. In order to verify this presumption, the combination of text characteristics would have to be set against the actual intentions of authors of justification texts and against the different perceptions and wishes of their readership. This is an issue for further research.

Text complexity is measured by an algorithm regarding the number of words per sentence and the number of syllables per word, it does not refer to the experience of readers. Obviously, the qualities of the reader also influence the comprehensibility of the text. Comprehensibility is an interactive concept. Therefore, the scores we derived do not represent readability, but a measure for the success or failure of the authors of court decisions to write relatively short sentences and relatively short words. In theory, text complexity can be linked to the intention of the judges to take the reading capacities of audiences into account. This point is supported by the fact that the so-called "Jus10fication" project instructed judges to write short sentences, use simple language and avoid legalese in order to better communicate justification texts to the parties. For lack of variance, we consider it useless to link text complexity of justification texts to an intended audience. The judges seem not to be able to adapt text complexity to an audience that otherwise is clearly recognizable: when there is media interest in a case, justification texts contain more words, with more references to legislation and moral considerations in at least half of the cases, compared to other cases.

A factor that could be involved in future studies is the use of standard text formats in justification texts, by recording the recognizable elements in the court decisions. We speculate that the current outcomes for text complexity can be explained by both the use of standard text blocks and by the similarity of working processes within the court sectors, for example the cooperation between judges and court staff. Also the questions on the evolution of proceedings, the way facts are described, and representation of viewpoints of parties in the justification texts may be of interest.

While developing the independent variables and their operationalization, we tried to define a variable: 'the interest of the case'. This term was elaborated as the societal meaning of the case, importance for other cases (development of the law) and as financial interests of the parties. Those terms seemed highly relevant, but could not be measured from court justification texts, except for the financial interest in the case. In this context, media interest may be of relevance for the societal interest of the case, but it is not the same as the financial interest of the parties. Media attention as an activity creates societal meaning. When a case receives media attention, more people will have an opinion about it. Moreover, also 'societal disturbance' as an indicator for 'societal meaning of the case' is hard to measure.

---

<sup>9</sup>The report has been published in November 2014 in Dutch at the Netherlands judiciary website (Langbroek, P.M. *et al.*, 2014)

Societal meaning could be operationalized maybe with the maximum punishment for different crimes, or in administrative cases to the possible environmental impact of a license. In trade cases, societal interest could be related to the number of persons interested in the case. At this point it is most interesting to see that the length of a justification text in numbers of words is also correlated to case characteristics, especially party constellation, number of lawyers as legal representatives and the amount of attributed standard time for cases. This may suggest that number of words of a justification text is an indicator of 'the interest of the case'. But on the other hand it may just as well be an indication that the courts' financing system influences the way justification texts are being produced. However that may be, future studies may try to develop a variable for the concept of 'societal interest in a case' in such a manner that it could be used to compare justification texts.

Financial interests of parties can be measured, but especially for trade cases and small claims cases. In family cases, money may be at stake, but they are also often about guardianship. In administrative law cases, the stakes may be about money, but especially in licensing cases, financial interests often remain unmentioned. Measuring the amounts mentioned in a case may therefore not be equal to measuring the real financial value at stake. This is also a challenge for future research.

Furthermore, it may be relevant to involve years of experience of judges as independent variables, as an experienced judge may have more language abilities to adapt a text to intended audiences than a beginner.

The research showed that only very few references could be found to case-law in general and to case-law from international or supranational courts (12 times in the entire sample). This is relevant, because the Netherlands' constitution enables judges to implement directly applicable provisions of international treaties as a part of the national legal order. Also therefore we expected more than just 12 references to the case-law of the European Court for Human Rights and to the European Courts of Justice. The court here shows itself as a civil law court in the French tradition. Apparently, legislation is a much more important source to legitimize court decisions than case-law. There seems to be a discrepancy between the attention for case-law in law schools and the references to case-law in this first instance court judgments. Furthermore, judges seem to avoid references to European law. This may have many causes, for example judges depending on lawyers to present relevant European case law, or also a lack of knowledge of the judges. It could also be a lack of cases where European case law is relevant. This also is a subject for further research.

A next outcome worth mentioning is that the financing system of the court has almost no impact on the text characteristics, apart from the number of words in a justification text. When there is more standard time for a case the justification texts become longer on average. Considering that standard time per category of cases is developed by time writing research, and considering the outcomes for the variables for case law and references to legislation it is likely that longer texts have legal professionals as audiences. We speculate that in more complex cases more lawyers function as legal counsel and the court needs to spend more time on the case accordingly.

On average the justification texts from our sample are of a complexity that makes them unlikely to be understood by most lay people. A Douma score around 50 is an expert level text. Justification texts of judgments on average apparently are not written for the parties. In order to legitimize court decisions judges use references to case-law and to legislation, and will also sometimes include moral considerations. We think that judges' primary concern here is twofold. First, they want to show their professionalism to their colleagues and to the lawyers involved in a case. Second, they try to communicate with the general public and the

journalists, by using moral considerations in almost half the cases with media interest.

The outcomes for the variable *written elaborations of oral judgments immediately after hearing* show that here the court's organizational condition, its routines, becomes the dominant factor to explain the text characteristics, especially in criminal and small claims cases where large numbers dominate the daily work in the court. The text characteristics of those justification texts show a primary orientation on the courts' internal organization, compared to justification texts for one-shotters and justification texts in cases with media interest which both have clear signs of orientations on specific audiences. *Written elaborations of oral judgments immediately after hearing* are middle-of-the road texts, and cannot be linked to any intended audience.

The variable *party constellation* shows strong relations with number of words and the juridical intensity of justification texts. This shows the willingness of judges and the court to choose amongst audiences, especially between the parties and juridical professionals. How they could effectively combine those choices with texts with better communication qualities within the court organization also is a subject for further research.

### 9.2. Discussion on the research process: lessons learned

Presumably, in the Dutch context, qualitative research instead of the quantitative approach would not have led to similar outcomes. It is most likely that qualitative research would have reproduced judicial perceptions on a hard core part of their daily work: writing judgments. One of the reasons is that legal researchers come from a background (law) where they have learned at least to respect, if not to accept judicial authority as a basic professional value. Also therefore, this quantitative empirical research has produced different outcomes than a qualitative research would have done. In so far the push and pull from the Council for the Judiciary for a quantitative approach proved to be right.

The outcomes of this research have been presented several times to judges of the district court. They thought it was interesting, but found it difficult to relate the results to their own work. The outcomes therefore did not entirely fit the ongoing discussions about the right way to justify a court decision in writing. Part of the explanation of this difficulty is that the operationalization of variables did not fit judicial perceptions. Another part of the explanation may be that it is an outcome of this research that judges also are their own primary audience: they also write for their peers, and especially in difficult cases or cases with media attention the eyes of the peers – their professional esteem – seem most important.

Furthermore, our experiences with the research process shows how sensitive the district court judges and also the Council for the Judiciary were for evaluation outcomes that could help them understand why there is a discrepancy between judge's self-perceptions of writing judgments and our research outcomes. Judgments are a crucial aspect of judicial work, and any *public* comment that may threaten the legitimacy of judgment is unwelcome. Hence the court did not allow us to involve data on the number of years of experience judges have in the court into our model. They also did not want us to check the perceptions of court users of their written judgments.

It was quite a challenge, to carry out a research like this in a court involved in a reorganization process. Different stakeholders had diverging interests, complicating communication and cooperation. Not only the research itself was a challenge because of its uniqueness and its complexity, but also the process had many challenges and pitfalls we could not avoid because we (as lawyers) were utterly inexperienced with quantitative empirical research. Our check and double checks on the scoring were not enough. Also involving methodologically advanced colleagues

who have no experience in the judicial field did not help to prevent us from making scoring mistakes. The risk here is that considerable efforts for a quantitative research have been in vain. Considering the traditional compartmentalization of law faculties in the Netherlands and the complex differentiations of court proceedings per legal area in the back-offices of the court sectors, we should have hired specialists for each legal field to do the scoring instead of second year bachelor students.

Another lesson learned is that developing a model is possible only when there is enough theoretical background or similar research to build on. We were beginning blind, and developed our model only after data collection and initial analysis. Literature that could have helped was discovered after we begun developing our research and after our codebook was drafted.

We also did something well: we were able to drop some and maintain other variables because of validity issues, and adapt our model accordingly.

We are confident that this new angle of research on Court decisions is a useful and inspiring contribution to academic discussions in this field. More research is necessary in order to understand how justification texts of court judgments are being written and how properties of justification texts are influenced by the court internal production processes.

Last but not least: if courts want to understand how the messages of their judgments actually communicate for different audiences, then the only way to learn that is to ask these different audiences for their reading experiences.

## References

- Alexander, L. and Sherwin, E.L., 2008. *Demystifying Legal Reasoning*. Cambridge University Press.
- Bailey, M.A. and Maltzman, F., 2008. Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court. *American Political Science Review* [online], 102 (3), 369-384. Available from: [http://faculty.georgetown.edu/baileyma/Bailey\\_Law\\_APSR2008.pdf](http://faculty.georgetown.edu/baileyma/Bailey_Law_APSR2008.pdf) [Accessed 2 December 2014].
- Bar Niv, M. and Safra, Z., 1999. The Undesirability of Detailed Judicial Reasoning. *European Review of Law and Economics*, 7 (3), 161-175.
- Baum, L., 2006, *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton University Press.
- Bartels, B.L., 2009. The Constraining Capacity of Legal Doctrine on the U.S. Supreme Court. *American Political Science Review*, 103 (3), 474-495.
- Boone, M.M., 2007. *Financieren en verantwoordten (Financing and accounting, the functioning of the Netherlands judiciary evaluated)*. Den Haag: Boom Juridische Uitgevers.
- Brink, G. van den, 2009. Justice And Credibility: About Bridges Built By Judges. *International Journal for Court Administration* [online], 2 (1), 1-16. Available from: <http://www.ijcajournal.org/index.php/ijca/article/view/107/88> [Accessed 2 December 2014].
- Willemsen, P. et al., 2009. Final Dispute Settlement in numbers: report of an examination of final dispute settlement in Utrecht District Court. *Transylvanian Review of Administrative Sciences* [online], 28E, 129-147. Available from: <http://www.rtsa.ro/tras/index.php/tras/article/view/31/27> [Accessed 2 December 2014].

- Corley, P.C., Howard, R.M. and Nixon, D.P., 2005, The Supreme Court and Opinion Content: The Use of the Federalist Papers. *Political Research Quarterly*, 58 (2), 329-340.
- Cross, F.B., Spriggs, J.F. II, and Johnson, T.R., 2010. Citations in the U.S. Supreme Court: An Empirical Study of Their Use and Significance. *University of Illinois Law Review* [online], 2, 489-576. Available from: <http://www.illinoislawreview.org/wp-content/ilr-content/articles/2010/2/Cross.pdf> [Accessed 2 December 2014].
- Cserne, P., 2009. Policy Arguments Before Courts: Identifying and Evaluating Consequence-Based Judicial Reasoning. *Humanitas Journal of European Studies* [online], 3, 9-30. Available from: <http://ssrn.com/abstract=1625887> [Accessed 2 December 2014].
- De Rechtspraak, s.d. *Jaardocumenten* [online]. Available from: <http://www.rechtspraak.nl/Organisatie/Publicaties-En-Brochures/Pages/Jaardocumenten.aspx> [Accessed 3 December 2014].
- Elffers, H., and Keijser, J.W. de, 2008. Different perspectives, different gaps. Does the general public demand a more responsive judge? In: H. Kury, ed. *Fear of crime – Punitivity. New Developments in Theory and Research*. Bochum: Universitätsverlag Dr. N. Brockmeyer, 447-470.
- Engel, C., 2004. The Impact of Representation Norms on the Quality of Judicial Decisions. *Preprints of the Max Planck Institute for Research on Collective Goods* [online]. Available from: [http://www.coll.mpg.de/pdf\\_dat/2004\\_13online.pdf](http://www.coll.mpg.de/pdf_dat/2004_13online.pdf) [Accessed 2 December 2014].
- Eshuis, R.J.J., 2007. *Het recht in betere tijden (Justice in better times)*. Den Haag: Boom Juridische Uitgevers.
- Galanter, M., 1974. Why the Haves Come out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review*, 9 (1), 95-155.
- Gies, L., 2005. The Empire Strikes Back, Press Judges and Communication Advisors in Dutch Courts. *Journal of Law and Society*, 32 (3), 450-472.
- Huber, G.A, and Gordon, S., 2004. Accountability and coercion: is justice blind when it runs for office? *American Journal of Political Science* [online], 48 (2), 247-263. Available from: [http://as.nyu.edu/docs/IO/2602/account\\_gordon.pdf](http://as.nyu.edu/docs/IO/2602/account_gordon.pdf) [Accessed 2 December 2014].
- Hume, R.J., 2009. The impact of Judicial Opinion Language on the Transmission of Federal Circuit Court Precedents. *Law and Society Review*, 43 (1), 127-150.
- Ippel, P.C. and Heeger-Hertter, S., 2006. *Sprekend de rechtbank: alledaagse communicatie in de Utrechtse zittingszaal (Typically the court. Everyday communication in the Utrecht courtroom)*. Nijmegen: Wolf Legal Publishers.
- Keijser, J.W. de, Elffers, H. and Bunt, H.G. van de, 2008. Responsive but misunderstood. Dutch judges on their relation to society. In: H. Kury, ed. *Fear of crime – Punitivity. New Developments in Theory and Research*. Bochum: Universitätsverlag Dr. N. Brockmeyer, 471-488.
- Keijser, J.W. de, and Elffers, H., 2009. Cross-jurisdictional differences in punitive public attitudes? *European Journal of Criminology and Policy Research*, 15 (1-2), 47-62.
- Komter, M.L., and Malsch, M., 2012. The language of criminal trials in an inquisitorial system: the case of the Netherlands. In: L. Solan and P. Tiersma

- eds. *The Oxford Handbook of Language and Law*. Oxford University Press, 408-420.
- Langbroek, P.M., 2007. Case assignment in Dutch courts. In: P.M. Langbroek and M. Fabri, eds. *The right judge for each case: A Study of Case Assignment and Impartiality in Six European Judiciaries*. Antwerp: Intersentia, 105-131.
- Langbroek, P.M., 2010. Organisation Development of the Dutch Judiciary, between Accountability and Judicial Independence. *International Journal for Court Administration*, 2 (2), 21-31.
- Langbroek, P.M. et al., 2014. *Motiveringen van de Rechtbank Utrecht, een onderzoek naar de tekstkenmerken en publieken van rechterlijke motiveringen, November* [online]. Available from: <http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/WetenschapsOnderzoek/Overzichtonderzoeksprojecten/Pages/Motivering-van-vonnissen.aspx> [Accessed 3 December 2014].
- Malsch, M., Lavender, T. and Nijboer, H., 2006. Van kop tot staart. Helpt de motivering bij het begrijpen van schriftelijke strafuitspraken? (From head to tail. Does judicial justification/explanation help in understanding written criminal judgments?). *Nederlands Juristenblad*, 7, 365-366.
- Malsch, M., et al., 2004. Hoe helder is de rechter? Leesbaarheid en begrijpelijkheid van strafrechtelijke uitspraken. (How clear is the judge? Readability and intelligibility of criminal judgments). *Nederlands Juristenblad*, 22, 1112-1117.
- Malsch, M., and Manen, N. van, 2007. *De begrijpelijkheid van de rechtspraak. (The intelligibility of judgments)*. Den Haag: Boom Juridische uitgevers.
- Maxwell, J.A., 2012. *Qualitative Research Design, an interactive approach*. 3<sup>rd</sup> ed. London: Sage Publications.
- Merryman, J.H. and Pérez-Perdomo, R., 2007. *The Civil Law Tradition: an introduction to the legal systems of Europe and Latin America*. 3<sup>rd</sup> ed. Stanford University Press.
- Niblett, A., 2010, Do Judges Cherry Pick Precedents to Justify Extra- Legal Decisions?: a Statistical Examination. *Midwest Law Reviews* [online], 70 (1), 234-271. Available from: <http://digitalcommons.law.umaryland.edu/mlr/vol70/iss1/9/> [Accessed 2 December 2014].
- Oosten, P. van, Tanghe, D. and Hoste, V., 2010. Towards an improved methodology for automated readability prediction. *Proceedings of the Seventh conference on International Language Resources and Evaluation (LREC'10)* [online], 775-782. Available from: [http://www.lrec-conf.org/proceedings/lrec2010/pdf/286\\_Paper.pdf](http://www.lrec-conf.org/proceedings/lrec2010/pdf/286_Paper.pdf) [Accessed 2 December 2014].
- Ostrom, B.J., et al., 2008. *Assessing Consistency and Fairness in Sentencing: A Comparative Study in Three States*. Williamsburg: National Center for State Courts. Available from: <https://www.ncjrs.gov/pdffiles1/nij/grants/223854.pdf> [Accessed 2 December 2014].
- Owens, R.J., Wedeking, J., 2012. Justices and Legal Clarity: Analyzing the Complexity of U.S. Supreme Court Opinions. *Law & Society Review*, 45 (4), 1027-1061.
- Owens, R.J., Wedeking, J., Wohlfarth, P.C., 2013. How the Supreme Court Alters Opinion Language to Evade Congressional Review. *Journal of Law and Courts* [online], 1 (1), 35-59. Available from: <http://www.jstor.org/stable/full/10.1086/668482> [Accessed 2 December 2014].



- Plug, H.J., 2003. Evaluating unclarity in judicial decisions. Violations of the usage rule in legal argumentation. In: F.H. van Eemeren *et al.*, eds. *Proceedings of the Fifth Conference of the International Society for the study of Argumentation*. Amsterdam: Sic Sat, 845-851.
- Plug, H.J., 2012. Obscurities in the formulation of legal argumentation. *International Journal of Law, Argumentation and discourse* [online], 2 (1), 126-142. Available from: [www.ijlld.com/component/phocadownload/category/4-ijlld-21-2012?download=29:plug](http://www.ijlld.com/component/phocadownload/category/4-ijlld-21-2012?download=29:plug) [Accessed 2 December 2014].
- Ross, S.F., 2002. The Location and Limits of Dynamic Statutory Interpretation in Modern Judicial Reasoning. *Issues of Legal Scholarship*, 2 (2).
- Schauer, F., 2000, Incentives, Reputation and the Inglorious determinants of judicial behavior. *University of Cincinnati Law Review*, 68 (3), 615-636.
- Schneider, D.M., 2001. Empirical Research on Judicial Reasoning: Statutory Interpretation in Federal Tax Cases. *New Mexico Law Review*, 31 (2), 325-358. Available from: <http://ssrn.com/abstract=299567> [Accessed 16 September 2013].
- Scott, K.M., 2006. Understanding Judicial Hierarchy: Reversals and the Behavior of Intermediate Appellate Judges. *Law and Society Review*, 40 (1), 163-192.

**Appendix 1: results of statistical analysis**

Table 1 Results of MANOVAs. Differences in text characteristics of justification texts between legal areas of Utrecht District court

N = 958		Trade (190)	Administrative (231)	Criminal (277)	Small claims (107)	Family (153)	F
Number of words	M (Sd)	2545 (1772)	1637 (815)	3348 (2200)	1411 (1268)	1086 (851)	<b>72.287***</b>
Douma text complexity	M (Sd)	55.94 (6.95)	48.84 (4.73)	51.19 (7.58)	49.83 (7.39)	51.85 (9.60)	<b>27.32***</b>
Number of references to case-law	M (Sd)	.55 (1.88)	.81 (1.20)	.086 + (.44)	.14 (.63)	.045 (.20)	<b>20.52 ***</b>
Number of references to articles in legislation and treaties	M (Sd)	4.36(7.59)	8.26 (7.25)	8.92 (6.56)	2.03(4.20)	1.46 (2.72)	<b>55.81***</b>
Occurrence of moral considerations	M (Sd)	1.94 (.22)	1.97 (.15)	1.57 (.49)	1.96 (.19)	1.83 (.36)	<b>60.03***</b>
*p < .05; **p < .01; ***p < .001							

Table 2. Results of ANOVA's and t-test for differences in case characteristics and in text characteristics in justification texts.<sup>10</sup>

	Party constellation (Anova)			Nr of Legal representation (anova)			Financial interest in Euro's (anova)			Media interest (t=test)		Summary proceedings versus Ordinary Proceedings (t-test)		Single or Plural judge panel (t-test)		Written elaboration of oral judgments immediately after hearing (t-test)		Elaboration for appeal (criminal law only) (t-test)				
	One-shotters (310)	One shotter and repeat-player (634)	Repeat-players (16)	0 (71)	1 (231)	2 (655)	0 (580)	0-5000 (217)	5001-50.000 (110)	> 50.000 (51)	yes (147)	No (811)	Summary (128)	Ordinary (830)	Single (710)	Plural (248)	Yes (114)	No (808)	Low 0-150 minuten (285)	Medium 151-400 minuten (306)	High > 400 minuten (328)	
<b>Number of words</b>	M (Sd)	1683 (1410)	2424 (1887)	3375 (2424)	1134 (664)	1204 (866)	2664 (1924)	2009 (1739)	2268 (1825)	2660 (1778)	3063 (1901)	3594 (2323)	1945 (1553)	1926 (1061)	2240 (1878)	1785 (1294)	3382 (2401)	1861 (1011)	2282 (1884)	1402 (1038)	1581 (980)	3291 (2130)
	F/T	<b>F=22.06***</b>			<b>F=81.92***</b>			<b>F=8.85***</b>			<b>T=10.85***</b>		T= - 1.84		<b>T= - 13.01**</b>		<b>T= - 2.33*</b>		<b>F= 150.71***</b>			
<b>Douma text complexity</b>	M (Sd)	53.74 (8.49)	50.51 (7.24)	48.35 (5.85)	51.57 (7.14)	48.16 (6.96)	52.70 (7.62)	50.38 (7.47)	52.23 (7.87)	54.70 (6.82)	54.52 (6.99)	49.46 (6.64)	51.89 (7.73)	51.03 (7.08)	51.60 (7.70)	52.00 (7.64)	50.14 (7.40)	54.68 (7.91)	51.25 (7.45)	52.50 (8.89)	50.06 (7.53)	51.75 (7.76)
	F/T	<b>F= 20.75***</b>			<b>F=32.29***</b>			<b>F=14.53***</b>			T= -3.57		T= - .787		<b>T= 3.33**</b>		<b>T= 4.46***</b>		<b>F=8.06***</b>			
<b>Number of references to case-law</b>	M (Sd)	0.235 (0.96)	0.396 (1.18)	1.07 (1.32)	0.32 (0.87)	0.39 (0.93)	0.34 (1.20)	0.41 (1.04)	0.21 (1.44)	0.26 (0.77)	0.49 (1.02)	0.52 (1.37)	0.32 (1.06)	0.60 (1.10)	0.31 (1.12)	0.38 (1.16)	.26 (0.99)	0.0789 (0.50)	0.40 (1.19)	0.09 (0.42)	0.58 (1.01)	0.38 (1.48)
	F/T	<b>F= 5.07**</b>			F= 0.20			F=2.311			<b>T= 1.99**.</b>		<b>T=2.69**</b>		T= 1.43		<b>T= - 2.87**</b>		<b>F=14.91***</b>			
<b>Number of references to articles in legislation and treaties</b>	M (Sd)	2.26 (4.73)	7.47 (6.96)	13.96 (12.95)	4.29 (7.13)	4.44 (5.52)	6.58 (7.55)	6.24 (7.13)	5.35 (5.89)	4.78 (6.28)	6.74 (10.22)	10.66 (9.65)	5.03 (6.00)	7.07 (7.49)	5.71 (6.89)	4.96 (6.47)	8.58 (7.69)	6.65 (4.85)	6.01 (7.30)	3.43 (4.41)	6.29 (7.17)	7.08 (7.43)
	F/T	<b>F=81.31***</b>			<b>F=10.25***</b>			F=1.779			<b>T=6.83***</b>		<b>T=2.04*</b>		<b>T= -7.21***</b>		T= 0.751		<b>F=25.35***</b>			
<b>Occurrence of moral consideration<sup>s</sup></b>	M (Sd)	1.94 (0.23)	1.78 (0.41)	1.78 (0.44)	1.94 (0.23)	1.93 (0.25)	1.78 (0.41)	1.84 (0.36)	1.77 (0.41)	1.82 (0.37)	1.90 (0.35)	1.47 (0.50)	1.89 (0.30)	1.94 (0.22)	1.81 (0.38)	1.90 (0.29)	1.61 (0.49)	1.96 (0.18)	1.81 (0.38)	1.85 (0.35)	1.93 (0.25)	1.65 (0.47)
	F/T	<b>F=20.62***</b>			<b>F= 16.9***</b>			<b>F=2.70*</b>			<b>T= - 13.69***</b>		<b>T= 3.70***</b>		<b>T= 11.41 ***</b>		<b>T= 4.01***</b>		<b>F=74.72***</b>			

\*p &lt; .05; \*\*p &lt; .01; \*\*\*p &lt; .001

<sup>10</sup> We performed Anovas for the independent scale variables with more than 2 categories, and independent sample t-tests for the other independent variables.

Table 3 Results of hierarchical regression analyses with five text characteristics of justification texts as dependent variables and 7 case characteristics as independent variables (N= 919)

	Number of words			Text complexity			Number of references to case-law			Number of references to articles in statute acts			Occurrence of moral considerations		
	B	SE	$\beta$	B	SE	$\beta$	B	SE	$\beta$	B	SE	$\beta$	B	SE	$\beta$
<b>Conflict Characteristics</b>															
Party constellation	-758.77***	111.35	.21***	-2.49***	.55	-.15***	-.26**	.08	.116**	.05***	.46	.36***	-.13***	.02	-.16***
Nr of lawyers in Legal representation (0. 1. 2)	632.98***	83.21	.23***	1.40**	.41	.11**	-.03	.06	-.02	-1.17*	.35	.11**	-.07***	.02	-.12***
Financial interest in four categories	261.32***	58.08	.13***	1.29** *	.29	.15***	.00	.04	.00	.23	.24	.03	.00	.01	.00
Media interest	-816.33***	154.67	-.15***	3.61** *	.77	.15***	.08	.11	.02	-3.25***	.65	-.16***	.48***	.03	.41***
Ordinary or summary proceedings	357.23*	149.73	.06*	.110	.74	.00	-.22*	.11	-.07*	-1.10	.62	-.05	-.16***	.03	-.14***
<b>Case Management Characteristics</b>															
Written elaboration of oral judgments immediately after hearing	-139.18	136.31	-.03	-4.61***	.68	-.22***	.17	.10	.06	-.76	.57	.04	-.15**	.03	-.15***
Attributed standard time	588.36***	69.63	.28***	.20	.34	.02	.08	.05	.06	.68*	.29	.08*	-.03	.01	-.06
* $p < .05$ ; ** $p < .01$ ; *** $p < .001$															

Table 4: The influence of 'legal area' compared with the combined influences of other case characteristics on text characteristics by Adjusted R Squared<sup>11</sup>

<i>Text characteristics</i>	Number of words	Text complexity	Number of references to case-law	Number of references to articles in statute acts	Occurrence of moral considerations
<i>Case characteristics</i>	0.32	0.15	0.02	0.21	0.31
<i>Legal area plus Case characteristics</i>	0.36	0.19	0.09	0.27	0.41

<sup>11</sup> In both Manovas we removed the variable 'single judge and plural judge panel' because it fully overlaps with 'ordinary proceedings'. We also deleted the variable 'elaboration for secondary appeal' in criminal cases, because it fully overlaps with the variable 'written elaboration of verbal judgment immediately after hearing'.