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The role of the judiciary in environmental securitisation. *Urgenda Foundation v. The State of The Netherlands*

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Abstract
Since climate change is broadly recognised as a threat multiplier, the environmental problems are considered in the sense of security. Academic articles are focused on analysing states, international non-governmental organisations, as well as regional entities such as the European Union as securitising actors. Limited attention has been given to the judiciary. This article fills the existing gap. The aim of the research is to analyse how do the Dutch Courts securitise the climate in adjudicating the case *Urgenda Foundation v. The State of The Netherlands*, through the lens of the securitisation theory. The implementation of discourse analysis as a research methodology has proved that the Dutch courts have contributed to environmental securitisation by ruling on the legal obligation of the Dutch government to prevent dangerous climate change in order to protect its citizens.
Keywords: Urgenda Foundation case, securitisation theory, climate change, environment, discourse analysis, environmental securitisation

Rola sądownictwa w procesie sekurytyzacji środowiskowej. Orzeczenie w sprawie *Urgenda Foundation przeciwko Królestwu Niderlandów*

Streszczenie
Uznanie zmian klimatu jako mnożnika zagrożeń doprowadziło do włączenia niniejszej problematyki do studiów nad bezpieczeństwem. Większość badań koncentrujących się na roli aktorów sekurytyzujących analizuje działania państw, międzynarodowych organizacji pozarządowych, a także podmiotów regionalnych, takich jak Unia Europejska. Ograniczoną uwagę poświęcono wymiarowi sprawiedliwości. Niniejszy artykuł uzupełnia istniejącą lukę. Celem badania jest przeprowadzenie analizy przez pryzmat teorii sekurytyzacji, odpowiadając na pytanie, w jaki sposób decyzje wydane przez sądy holenderskie w sprawie *Urgenda Foundation przeciwko Królestwu Niderlandów* wpłynęły na sekurytyzację zmian klimatu. Zastosowanie analizy dyskursu jako metodologii badań dowiodło, że sądy holenderskie orzekając o prawnym obowiązku rządu Królestwa Niderlandów do zapobiegania zmianom klimatu w celu ochrony obywateli, przyczyniły się do pogłębienia procesu sekurytyzacji środowiska naturalnego.

Słowa kluczowe: Orzeczenia w sprawie Urgenda Foundation, teoria sekurytyzacji, zmiany klimatu, środowisko naturalne, analiza dyskursu, proces sekurytyzacji środowiska naturalnego

For centuries, the planet Earth has been subordinate to human beings and their activities. The capitalist globalised world is characterised by massive extraction of natural resources. Over the past few hundred years, human influence on the planetary system has evolved from insignificance to the creation of global-scale impacts (Dupont 2018). Data presented by the Intergovernmental Panel on Climate Change (IPCC 2013) confirms that greenhouse gas emissions caused by the "human imprint" intensify global warming. It should be emphasised that the increasing anthropogenic force affects the multidimensional process of climate change. Therefore, the issue of environmental degradation has been included in the debates of social, political, legal and economic researchers. Since climate change is broadly recognised as a threat multiplier, the environmental problems are considered in the sense of security.

The discourse on environmental security has been manifested in the 1970s, when the United Nations Conference on the Human Environment (1972) took place. Nevertheless, the academic debate on climate security has gained momentum after the presentation of a series of publications by Barry Buzan (1991, 1998), Ole Wæver (1996, 1998) and Jaap de Wilde (1998). According to the researchers, attempts at environmental securitisation have a brief history compared to the traditional – military – sector (Buzan et al. 1998: p. 71). The securitisation theory as a framework for analysis contributes to the "understanding of who securitizes, on what issues, for whom, why, with what results, and, not least, under what conditions" (Buzan et al. 1998, p. 32). It should be emphasised, however, that the securitisation actor, who presents an issue as an existential threat, plays a key role in the securitisation process in general. While academic articles focus on analysing states, international non-governmental organisations, as well as regional entities such as the European Union as securitising actors, limited attention has been given to the judiciary. In fact, environmental issues remain a challenge for adjudication. Nevertheless, courts and tribunals are making efforts to change the existing paradigm and legal practices.

Over the past five years, Dutch courts have issued landmark decisions in the Urgenda climate case. This case law was the first in the world, in which courts have ruled that the Dutch government has a legal obligation to prevent dangerous climate change in order to protect its citizens (see: Urgenda Foundation 2019). The Urgenda case opens the door to a broader interpretation of human rights and adjudication on climate issues. Therefore, the courts' rulings received a lot of attention from professors of European and International law. The analysis of both, the judiciary as a securitising actor and the Dutch courts' rulings in the environmental security context provides an unexplored research field. In reflection of this facts, since *Urgenda Foundation v. The State of The Netherlands'* case has an international significance, examining the potential role of the judiciary in environmental securitisation seems to be justified.

The purpose of this article is to analyse how do the Dutch Courts securitize the environment in adjudicating the Urgenda climate case? The first section introduces

the reader to an overview of existing academic literature on the Urgenda case, as well as on environmental security in general. In order to conduct examination through the lens of securitisation theory as a speech act, the second section discusses this research framework and presents the securitisation components that are used to analyse Dutch rulings. The third section presents discourse analysis as a tool that is used to examine the Urgenda climate case. This qualitative methodology enables the analysis of written and spoken speech acts, therefore, it has been chosen for the purposes of this article. The analysis of the judiciary as a securitising actor, which is a key part of the article, is followed by discussion and conclusions. In the light of the above, it should be emphasised that Urgenda case analysis makes an important contribution to the academic debate in the sense of the growing tendency to environmental securitisation and its significance for the global community.

Literature review

The ruling in the Urgenda climate case against the Dutch Government was the first in the world, in which the judiciary emphasised that the government has a duty to prevent dangerous of climate change in order to protect citizens (Lin 2015: p. 66). On the 24th of June 2015, The Hague District Court ruled that the Dutch government is obliged to reduce greenhouse gases by at least 25% by the end of 2020 compared to the level recorded in 1990. In 2018, the Court of Appeal uphold The Hague District Court's decision by founding a violation of Articles 2[1] and 8[2] of the European Convention on Human Rights (Mayer 2019: p. 168). In the final decision of the Supreme Court (20 December 2019), the highest judiciary in the Netherlands emphasised that the government needs to reduce greenhouse gas emissions.

Consequently, the Urgenda case has been widely recognised by the international community as a milestone and "historic victory for climate justice" (Urgenda Foundation 2019). Law professors, Kars de Graaf and Jan Jans (2015: p. 517) describe the Urgenda case as an *unexpected*, *spectacular*, *surprising* and *unprecedented*.

In recent years, climate litigation has been characterised by an upward trend. As Leijten (2019: p. 117) notes, in the reflection of the growing number of climate cases adjudicated by international courts and tribunals, Urgenda's ruling has a significant impact on changing legal logic and practice. According to the scholar (Leijten 2019: p. 118), the Dutch court's decision affected the judicial proceedings globally, and on the other hand, it stressed that there is a strong *need to take efforts to ensure that human rights 'fit' climate change case.* Therefore, the nature of this case-law is illustrated by Leijten (2019: p. 114) as unique and abstract. The transnational importance of the ruling was exemplified by the

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[1] Article 2 of the ECHR - Right to life - *1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

[2] Article 8 of the ECHR - Right to respect for private and family life - *1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

UN High Commissioner for Human Rights through her statement. Michelle Bachelet emphasised that the Urgenda case "confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of greenhouse gases" (UN Human Rights 2019). According to Minnerop (2019: p. 177), who examines whether the decision of The Hague Court of Appeal is consistent with the existing environmental case law of the European Court of Human Rights, the Urgenda case can be recognised as *a part of a tidal wave of judicial enquiry* into climate justice. Furthermore, the researcher concludes that the court's ruling gave impetus to judicial investigations regarding the governmental responsibility for climate crisis response.

While most of the academic articles on the Urgenda case focus on legal analysis, it is worth referring to the paper by Josephine van Zeben (2015), who partly examined the political consequences of the ruling. The scholar argues that the court's decision led to more ambitious governmental action on climate change mitigation. The Urgenda case has intensified the discussion on environmental degradation and the effects of human activities. As van Zeben emphasises, The Hague District Court's ruling has resulted in a parliamentary debate on climate policies. According to Verschuuren (2019: p. 98), this case law "have implications that go beyond the Netherlands". Therefore, Urgenda judgments played a key role in clarifying the legal obligations of states to prevent dangerous climate change. As Verschuuren (2019: p. 98) notes, the arguments presented in the Urgenda case have been used in the so-called *Peoples' Climate case*[3] initiated by 10 families from Portugal, Germany, France, Italy, Romania, Kenya, Fiji, and the Saami Youth Association Sáminuorra. The group of people brought an action in the European Union General Court in order to obligate the EU to adopt stricter rules on greenhouse gas emissions. It can, therefore, be concluded that court's rulings affect policies at national, regional and global level.

Furthermore, it should be emphasised that the Urgenda climate case has been examined in a philosophical context. According to Maciej Nyka (2016: p. 371), The Hague District Court's decision plays a significant contribution to examining intergenerational justice in international environmental law. The researcher emphasised that the phenomenon of intergenerational justice was the driver for the final court decision. In fact, the Urgenda case was ruled in the interest of present and future generations. This case law has been discussed through the lens of moral duty, and moral responsibility.

The Urgenda climate case attracts the attention of scholars in the field of law, therefore, most academic articles focus on legal analysis. Since the landmark decision by Dutch Supreme Court was announced in December 2019, examination of this case law is tempting and necessary. The purpose of the literature review is to illustrate the research gap, in other words, to identify what is missing in existing studies. While the Dutch courts' decisions were analysed in terms of their legal significance, this article examines the role of the judiciary as a securitising actor. Laura Henderson (2014) examines the impact of

[3] Case no. T-330/18. Armando Ferrão Carvalho and Others v. The European Parliament and the Council.

the judiciary's securitisation on legal discourse in the realm of antiterrorism in the United States, however, it should be emphasised that this article analyses the role of judiciary in the context of environmental securitisation. According to Scott Watson, the role of the judiciary in the securitisation process is unexplored (Henderson 2014: p. 1). Therefore, this article contributes to both, expanding the meaning of Urgenda climate case, and on the other hand, including the judiciary in the environmental securitisation debate, more broadly, in security studies.

Since "climate change is a collective problem par excellence" (Dupont 2018: p. 371), the issue of environmental degradation has been broadly discussed around the world in recent decades. The publication of *Our Common Future* by the World Commission on Environment and Development in 1987 has intensified the climate debate in the sense of security. As Buzan (1991: p. 20) notes, environmental security is necessary for the existence of human beings as those who depend on the planetary system. It should be emphasised that considering climate change through the prism of danger has changed the paradigm of traditional, military-based security (Dyer 2001; Trombetta 2008). The atmosphere is shared globally, therefore, solidarity is the foundation to prevent dangerous climate change, which has been exemplified by many scholars (Hardin 1968; Thompson 1999; Trombetta 2008). The actions taken by individual states will not significantly reduce greenhouse gas emissions, however, it should be noted that efforts taken by the Dutch judiciary are spreading the necessary practices. Therefore, this "drop in the ocean" is noteworthy and can be seen in the light of securitisation theory. Research on securitisation has explicitly shown how this process affects policy- and law-making. The practices of the securitisation have been studied in many different contexts, excluding the role of the audience that, in fact, has received little attention. Nevertheless, while the role of executive, legislature and entities such as European Union has been extensively analysed, the role of the judiciary as a securitising actor needs to be explored. To conduct the examination, the next section of this article presents and discusses the theory of securitisation as a theoretical framework for the Urgenda climate case analysis.

Theoretical framework

Since public debate on the consequences of environmental degradation has intensified, security researchers have been paying more attention to this issue. In recent decades, the narrow concept of security presented by realists has been questioned due to the expanding catalog of non-traditional threats such as climate change. Barry Buzan, Ole Wæver and Jaap de Wilde (1998: p. 23) argue that more attention should be given to unconventional sectors, such as economy, society and the environment. In the 1990s, researchers offered a new constructivist approach to security studies by introducing the theory of securitisation. As the scholars emphasise, this method offers an analysis of *who can securitize what and under what conditions* (Buzan et al. 1998: p. 1). It should be noted that over the years, this theory has been broadly recognised as an important approach to security studies (Trombetta 2008: p. 587). Furthermore, according to Fijałkowski (2012:

p. 161), the analysis of international practices through the lens of securitisation theory leads to the extension of both academic and public discourses.

The securitisation is defined as a process of transforming challenges into a threat category. This conceptual framework is a relevant research tool for those interested in the process of constructing security (McDonald 2008: p. 563). The Copenhagen School laid the foundations for the theory of securitisation, however, this concept has been extensively developed by other scholars in recent years (Balzacq 2005, 2015, 2016; Floyd 2010, 2011, 2016; Diez et al. 2016; McDonald 2008; Trombetta 2007, 2008). According to Waever (1996: p. 106), objective threats *do not exist a priori*, moreover, security is a *specific way of framing an issue*. In the light of the above, any issue can be moved into the threat category. It should be noted that *"security" is the move that takes politics beyond the established rules of the game,* therefore, securitisation has been recognised as an intensified form of politicisation (Balzacq 2005: p. 174). Consequently, securitisation is defined in the literature as a process, in which the securitising actor presents an issue as an existing threat through a speech act, resulting in extraordinary measures (McDonald 2008: p. 567). Therefore, all securitisation acts include the following components:

- A state or non-state actor, who makes a securitising move;
- An existing threat that has been identified by the actor;
- A referent object that is threatened and needs protection;
- An audience that should accept the existence of a threat;

It should be noted that an actor plays a key role in the process of securitisation for two reasons. First of all, the securitising actor prioritises the issue, which leads to a paradigm shift. This entity makes a securitisation move by means of a speech act. It is worth noting that the idea of speech acts has a long philosophical and sociological tradition. According to Wæver, "by saying the words, something is done" (see: Buzan et al. 1998: p. 26). Nevertheless, the use of language and jargon is not sufficient to complete the securitisation process. A securitising speech act needs to be characterised by specific rhetorical structure, resulting in extraordinary measures. Furthermore, an equally significant role of the securitising actor is to convince the audience that the issue is a source of danger. Securitisation as a speech act is a form of social practice involving the audience in the process of creating security (Buzan et al. 1998: p. 23). While most academic articles examine states and non-state entities such as NGOs and the EU as securitising actors, this article studies the role of the judiciary in the securitisation process.

The theory of securitisation has been recognised as an important approach to security studies in the context of challenges of the modern world. According to Ciută (2009), the phenomenon of recognising climate change as an existing threat has transformed existing logic and security practice. Folyd (2010) argues that examination of the environmental securitisation is relevant and morally justified. Furthermore, as Balzacq (2016) emphasises, this theory is crucial to environmental issues in the sense that it prioritises climate change in law- and policymaking procedure. The use of securitisation theory as a framework for analysis is necessary to expand research on both national and international security. The purpose of this article is to analyse judicial practice based

on courts' rulings in the Urgenda case through the lens of the securitisation theory as a speech act. The implementation of this framework leads to an understanding of how the judiciary as a securitising actor transformed environmental issues into a threat category. Since the aim of this article is not to examine whether environmental securitisation has been successful, the role of the audience is not discussed in the text. In order to identify the answer to the research question, the next section presents and discusses the methodology that has been chosen for the examination.

Methodology

According to Phillips and Hardy: "without discourse, there is no social reality, and without understanding discourse, we cannot understand our reality, our experiences, or ourselves" (Phillips, Hardy 2002: p. 2). Therefore, discourse analysis as a methodology has great potential in the sense of exploring the processes of social construction. Discourse analysis is a valuable tool for researchers interested in the empirical consequences of language use. This qualitative method explains social phenomena, however, it should be emphasised that it offers extensive study of the nature of knowledge called epistemology (Gergen 1999). Michel Foucault (1965), who had a great impact for exploring the relationship between knowledge and power, argued that social reality is produced through discourses. Discourse analysis, developed by Michel Foucault, Jürgen Habermas, and Pierre Bourdieu, provides an understanding how language is used in a social and political context, moreover, it can be applied in various fields of study.

In light of the securitisation theory, the social process of constructing security is based on the speech act (Waever 1996). Since the wording is crucial to securitisation, discourse analysis is the appropriate methodology to study this phenomenon. According to Teun van Dijk (1993: p. 250), "the relationship between discourse structures and power structures can be considered more or less directly" from a socio-political perspective. Detraz and Betsill (2009) emphasizes that the use of language influences political trends and practices. The theorists argue that discourse analysis can be applied to study the environmental narrative. Furthermore, this methodology is a framework for analysing why and by whom climate change is prioritised (Hajer 1995). Considering the above, analysis of the securitisation by which Dutch courts framed, through wording, the issue of climate change as an existential threat is an interesting field of study. Additionally, this examination leads to deeper reflection on environmental securitisation itself.

According to Phillips and Brown (1993), written words constitute social reality by making meaning. Therefore, understanding the significance of texts through discourse analysis is necessary. Nevertheless, in recent decades it has been emphasised that discourse analysis should include research on spoken language. As Teun van Dijk (1997) notes, studying spoken statements is equally important, moreover, it leads to more comprehensive analysis. According to Phillips and Hardy (2002), discourse analysis is characterised by a wide range of data that can form the basis of research. Therefore, sources such as documents, articles, interviews, and political speeches can be studied

(Wetherell et al. 2001). Shuy (2001: p. 437) argues that "law is a fertile field for discourse analysts". In the light of the above, this methodology can be applied to examine judicial decisions.

In order to identify the answer to the research question, this article studies Dutch courts' rulings in the Urgenda case through discourse analysis. Furthermore, video material presenting judges' statements will be used for this examination. Discourse analysis seems to be an appropriate methodology to understand how the judiciary securitizes environmental issues by using language, and what the consequences of this process are. The next section of the article presents considering the role of the judiciary as a securitising actor.

Analysis and discussion

The aim of this article is to analyse how do the Dutch Courts securitize the environment in adjudicating the Urgenda climate case. In order to identify the answer to this research question, the following section examines the potential role of the judiciary to act as a securitising actor. The securitisation move is expressed by the speech act – "by saying the words, something is done" (Buzan et al. 1998: p. 26). Therefore, the crucial component of this examination is an analysis of how Dutch courts have spoken about environmental issues in the Urgenda case, in other words, whether the judiciary has presented climate change as an existential threat. If so, for whom have the courts framed the climate change issue in terms of security, generally speaking, "who" is the referent object? Finally, whether the judgments in the Urgenda case resulted in extraordinary measures or at least whether the Dutch courts' decisions have been characterised by the extraordinary nature. The examination is based on the decisions of The Hague District Court (2015), The Hague Court of Appeal (2018) and Supreme Court of The Netherlands (2019) that ruled in the Urgenda case between 2015 and 2019. This study is conducted through the discourse analysis based on written judgments, as well as video materials available on the YouTube platform.

In November 2013, Urgenda Foundation and a group of 886 Dutch citizens requested The Hague District Court to rule against the State of The Netherlands (see: Urgenda Foundation 2019). According to the citizens, the Dutch government did not take appropriate action to combat climate change. Therefore, Urgenda asked the court to order the state to reduce its greenhouse gas emissions by at least 25% before 2020 compared to the level recorded in 1990. On the 24th of June 2015, The Hague District Court ruled that Dutch government must immediately take more effective action on climate change. Failure to comply with this requirement would be unlawful in the light of the judgment. This decision was made in the light of the government's duty of care to protect and improve the living environment. The Hague District Court has presented climate change as an existing threat by saying: "the hazardous climate change that is caused by a warming up of the earth of 2˚C or more [...] is threatening large groups of people and human rights" (Judgment 2015: p. 29, par. 3.1). In reference to scientific publications, the court

quoted the IPCC report, indicating that global warming "poses significant risks to many unique and threatened systems including many biodiversity hotspots" (Judgment 2015: p. 6, par. 2.12). Furthermore, during the announcement of the decision, one of the judges explicitly articulated that "many species will go extinct from the heat" (see: YouTube 2015). It can be deduced that the dangers arising from climate change concern both the planet earth and its biodiversity, as well as human beings. Therefore, the judiciary has identified two referent objects that are threatened by climate change. Nevertheless, human rights appear to be at the core of adjudication and environmental securitisation. It should be emphasised that The Hague District Court has expressed its speech act by using language and security jargon. In the verdict of 2015 (English translation), the word "threat" and its derivatives in the context of climate change was used 17 times. The word risk was recalled 34 times, moreover, the document contains 8 words related to "security". In the light of these facts, it may be argued that *by saying the words*, the judges have made an environmental securitisation move.

After the District Court's decision, the ruling was appealed by the State of the Netherlands. On the 9th of October 2018, the Court of Appeal upheld this decision by saying: "the Court believes that it is appropriate to speak of a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life. As has been considered above by the Court, it follows from Articles 2 and 8 ECHR that the State has a duty to protect against this real threat" (Judgment 2018: par. 45). The Court of Appeal emphasised that greenhouse gas emission reduction "is necessary to protect the citizens of the Netherlands, calling climate change as a source of the real and imminent threats" (Judgment 2018: par. 46). Therefore, the judiciary has illustrated the relevance of human rights in the sense of the government's obligation to mitigate climate change, moreover, it has articulated the next speech act on environmental securitisation (see: YouTube 2018).

While the Dutch government had doubts as to whether Articles 2 and 8 of the European Convention on Human Rights oblige the State to take measures, the Supreme Court of The Netherlands decided in December 2019 that: "the ECHR protection is afforded to the persons who fall within the states' jurisdiction" (Judgment 2019: par. 5.2.1). Accordingly, the highest court in the Netherlands upheld the previous decisions in the Urgenda case. The Dutch Supreme Court, paying attention to the "genuine threat of dangerous climate change" (Judgment 2019, par. 2.3.2), maintained the securitisation narrative articulated by the lower courts. It should be noted that the court has placed climate issues within a security framework through language and its importance to the securitisation process. Furthermore, the document published by the highest judiciary has made a significant contribution to understanding the extraordinary nature of courts' decisions. According to judges, the Urgenda case *involves an exceptional situation* (Judgment 2019: par. 8.3.4). In the reflection of shifting the climate issue towards security, the court stressed that measures to reduce greenhouse gas emissions *are urgently needed* (Judgment 2019: par. 8.3.4).

This section studies the court documents including three rulings and verbal arguments in order to analyse how do the Dutch Courts securitizes the environment

in adjudicating the Urgenda climate case. In the light of the above facts, it can be concluded that the courts manifested securitisation move by speech acts. Therefore, the role of The Hague District Court, The Hague Court of Appeal, and Supreme Court of The Netherlands has a broader meaning. Accordingly, the judiciary as a securitising actor presented climate change as an existential threat, which is exemplified by quotes. It should be noted that environmental securitisation fulfills two purposes. On the one hand, it protects human beings, and on the other hand, the Earth's biodiversity itself. Nevertheless, people and their rights seem to be the main referent object for Dutch courts. The issue of extraordinary measures does not seem to be clear in terms of judicial decisions, therefore, it is necessary to introduce the reader to the discussion. In fact, the implementation of emergency measures by non-state actors is more complicated because such an entity has no direct political influence. It should be emphasised, however, that court decisions are characterised by a unique nature that goes beyond the ordinary frame of adjudication. The Urgenda ruling is the first in the world, in which courts ordered the State to reduce its greenhouse gas emissions. Therefore, the Supreme Court ruling indirectly affects the policy of the Netherlands. Secondly, the courts had no legal obligation to consider preventing dangerous climate change in a sense of human rights, nevertheless, judges have made a significant contribution to existing legal logic and practice. Thirdly, the Urgenda case has opened the door to other climate rulings. The courts' decisions inspired environmental cases in the EU Member States and other countries around the world.[4] After the Supreme Court's decision, Mary Robinson, who is the former UN High Commissioner for Human Rights and former President of Ireland emphasised that we – as human beings – are at real risk, "the judgment from the highest court in the Netherlands affirms that governments are under a legal obligation, as well as a moral obligation, to significantly increase their ambition on climate change" (Schwartz 2019). Consequently, Urgenda case can be seen as the judiciary's first major move in the environmental securitisation. The success of the Dutch courts lay in the law interpretation, and its potential role as a securitising actor in the use of language. Environmental securitisation by the judiciary has consequences in influencing public discourses and public opinion, as well as the attitude of society.

Conclusions

This article claims that courts' rulings can be analysed through the lens of securitisation theory, therefore, the judiciary deserves the attention of security studies. Undoubtedly, the Urgenda climate case has international significance, however, its meaning goes beyond the legal studies. It should be emphasised that the Dutch courts have contributed to environmental securitisation. The Hague District Court, The Hague Court of Appeal, as

[4] Belgium, Canada, Colombia, Ireland, Germany, France, New Zealand, Norway, the UK, Switzerland. More information: Urgenda Foundation (2020),*Global climate litigation*, https://www.urgenda.nl/ en/ themas/climate-case/global-climate-litigation/

well as Supreme Court of The Netherlands framed the issues of climate change as an existential threat, moreover, their adjudication was characterised by extraordinary nature. Therefore, it can be concluded that the judiciary plays the role of the securitising actor. The judges have an impact on the existing legal logic. They affect the shape of the national, European, as well as international law. Therefore, courts and tribunals have significant potential to change practices regarding environmental degradation and climate change. The role of the judiciary should be included in the debate on environmental and human security as an entity capable of ruling.

The purpose of this article was to analyse how the Dutch Courts securitizes the environment in adjudicating the Urgenda climate case. The first section introduced the reader to an overview of existing academic literature on the Urgenda case, as well as on environmental security in general. The literature review has shown that most academic articles on Urgenda case focus on legal analysis, and on the other hand, that the role of the judiciary as a securitising actor is not sufficiently explored. The second part of the article studied selected components of the securitisation theory in order to identify those that were relevant to the examination. Research on this theory has demonstrated that environmental issues have changed the traditional paradigm of security studies due to their abstract, non-military character. Furthermore, it provides a framework for analysing the securitisation process as a speech act and leads to an understanding of who securitizes, on what issues, and for whom. The third section introduced discourse analysis and justified why this qualitative methodology was chosen for the examination. Since the theory of securitisation based on speech act, this method has enabled the study of spoken and written language, as well as its role in rulings on the Urgenda case. The analysis of how the Dutch Courts securitises the environment in adjudicating the Urgenda climate case was followed by the discussion. This examination has led to a broader conceptualisation of the judiciary's role as a securitising actor.

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References:

BALZACQ Thierry (2005), *The Three Faces of Securitization: Political Agency, Audience and Context*, "European Journal of International Relations", vol. 11(2), p. 171–201

BALZACQ Thierry (2015), *The 'Essence' of securitization: Theory, ideal type, and a sociological science of security*, "International Relations", vol. 29, no. 1, p.103–113

BALZACQ Thierry (2016), *'Securitization' revisited: theory and cases,* "International Relations", vol. 30(4), p. 494–531

BUZAN Barry (1991), *People, states, and fear: an agenda for international security studies in the post--Cold War era*, New York

BUZAN Barry, WÆVER Ole, DE WILDE Jaap (1998), *Security: A New Framework for Analysis,* Boulder: Lynne Rienner Publishers

CIUTĂ Felix (2009), *Security and the Problem of Context: A Hermeneutical Critique of Securitization Theory*, "Review of International Studies", vol. 35(2), p. 301–326

DE GRAAF Kars, JANS Jan (2015), "The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change", *Journal of Environmental Law,* vol. 27, no. 3, p. 517–527.

DETRAZ Nicole, BETSILL Michele (2009), *Climate Change and Environmental Security: For Whom the Discourse Shifts*, "International Studies Perspectives", vol. 10(3), p. 303–320

DIEZ Thomas, VON LUCKE Franziskus, WELLMANN Zehra (2016), *The Securitization of Climate Change: Actors, Processes and Consequences*, Abingdon and New York: Routledge.

DUPONT Claire (2018), *The EU's collective securitisation of climate change,* "West European Politics", vol. 42, no. 2, p. 369–390

DYER Hugh (2001), *Theoretical aspects of environmental security*, Dordrecht, The Netherlands: Kluwer

FIJAŁKOWSKI Łukasz (2012), *Theory of securitization and security construction*, "Przegląd Strategiczny", no.1, p.149-161

FLOYD Rita (2010), *Security and the Environment: Securitisation Theory and US Environmental Security Policy*, Cambridge

FLOYD Rita (2011), *Can Securitization Be Used in Normative Analysis? Towards Just Securitization Theory,* "Security Dialogue", vol. 42(4–5), p. 427–439

FLOYD Rita (2016), *Extraordinary or Ordinary Emergency Measures: What, and Who, Defines the "Success" of Securitisation?,* "Cambridge Review of International Affairs", vol. 29, no. 2, p. 677–694

FOUCAULT Michel (1965), *Madness and civilization: A history of insanity in the age of reason,* New York

GERGEN Kenneth (1999), *An invitation to social construction*, London

HAJER Maarten (1995), *The Politics of Environmental Discourse: Ecological Modernization and the Policy Process,* Oxford.

HARDIN Garett (1968), *The Tragedy of the Commons*, "Science", vol. 162, p. 1243–1248

HENDERSON Laura M. (2014), *The Judiciary as a Securitizing Actor?*, "SSRN Electronic Journal", DOI: 10.2139/ssrn.2442830

IPCC (2013), *Summary for Policymakers,* in: *Climate Change 2013: The Physical Science Basis*. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

JUDGMENT (2015), The Hague District Court. Urgenda Foundation v. The State of The Netherlands, https://www.urgenda.nl/wp-content/uploads/VerdictDistrictCourt-UrgendavStaat-24.06.2015.pdf (24.06.2015)

JUDGMENT (2018), The Hague Court of Appeal. Climate case Urgenda. Duty of care under Articles 2 and 8 ECHR. Reduction greenhouse gas emissions, https://www.urgenda.nl/wp-content/uploads/ECLI_NL_GHDHA_2018_2610.pdf (09.10.2018)

JUDGMENT (2019), Supreme Court of The Netherlands. Climate case Urgenda. Human rights. ECHR. United Nations Framework Convention on Climate Change, https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-SupremeCourt-Urgenda-v-Netherlands-20-12-2019.pdf (20.12.2019)

LEIJTEN Ingrid (2019), *Human rights v. Insufficient climate action: The Urgenda case,* "Netherlands Quarterly of Human Rights", vol. 37(2)

LIN Jolene (2015), *The First Successful Climate Negligence Case: A Comment on Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment),* "Climate law", 5(1): 65-81

MAYER Benoit (2019), *The State of the Netherlands v. Urgenda Foundation: Ruling of the Court of Appeal of The Hague (9 October 2018)*, "Transnational Environmental Law", vol. 8, no.1, p. 167–192

McDONALD Matt (2008), *Securitization and the Construction of Security,* "European Journal of International Relations", vol. 14(4)

MINNEROP Petra (2019), *Integrating the 'duty of care' under the European Convention on Human Rights and the science and law of climate change: the decision of The Hague Court of Appeal in the Urgenda case,* "Journal of Energy & Natural Resources Law", vol. 37

NYKA Maciej (2016), *Intergenerational Justice in international environmental law*, "Gdańskie Studia Prawnicze", no. 35

PHILLIPS Nelson, HARDY Cynthia (2002), *Discourse analysis: investigating processes of social construction*, London

PHILLIPS Nelson, BROWN John (1993), *Analyzing communication in and around organizations: A critical hermeneutic approach*, "The Academy of Management Journal", vol. 36, no. 6, p. 1547–1576

SCHWARTZ John (2019), *In 'Strongest' Climate Ruling Yet, Dutch Court Orders Leaders to Take Action,* "The New York Times", https://www.nytimes.com/2019/12/20/climate/netherlands-climate-lawsuit.html (20.12.2019)

SHUY Roger (2001), *Discourse Analysis in the Legal Context,* in: Deborah Schiffrin, Deborah Tannen, Heidi Hamilton (eds.), *The Handbook of Discourse Analysis*, Blackwell Publishers

TROMBETTA Maria Julia (2007), *Prevention or Securitization? Contending Perspectives on Security*, "Network Industries Quarterly", no. 9

TROMBETTA Maria Julia (2008), *Environmental security and climate change: analysing the discourse,* "Cambridge Review of International Affairs", vol. 21, no. 4, p. 585-602

UN HUMAN RIGHTS – Office of the High Commissioner (2019), *Bachelet welcomes top court's landmark decision to protect human rights from climate change,* https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25450&LangID=E (20.12.2019).

URGENDA FOUNDATION (2019),*Global climate litigation*, https://www.urgenda.nl/en/themas/climate-case/

VAN DIJK Teun (1993), *Principles of critical discourse analysis*, "Discourse and Society", vol. 4(2), p. 249–283

VAN DIJK Teun (1997), *Discourse as structure and process*, London

VAN ZEBEN Josephine (2015), *Establishing a Governmental Duty of Care for Climate Change Mitigation: Will Urgenda Turn the Tide?*, "Transnational Environmental Law", vol. 4, no. 2, p. 339–357

VERSCHUUREN Jonathan (2019), *The State of the Netherlands v Urgenda Foundation: The Hague Court of Appeal upholds judgment requiring the Netherlands to further reduce its greenhouse gas emissions*, "Review of European, Comparative & International Environmental Law", vol. 28, no.1, p. 94-98

WAEVER Ole (1996), *European Security Identities*, "Journal of Common Market Studies", vol. 34, no.1, p.103–132

WETHERELL Margaret, TAYLOR Stephanie, YATES Simeon (2001), *Discourse Theory and Practice: A Reader,* London

WORLD COMMISSION on Environment and Development (1987), *Our common future*. Report.

YOUTUBE (2015), *Verdict in Dutch climate case - with English subtitles*, https://www.youtube.com/watch?v=aY7eLKJWLxQ (25.06.2015)

YOUTUBE (2018), *High Court Urgenda Climate Case,* https://www.youtube.com/watch?v=opY-HioBKkFk (24.10.2018)

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