

# **The Influence of Liability Law on Adaptation to Climate Change**

H.K. Gilissen, LLM

Utrecht University  
Centre for Environmental Law and Policy

Consortium Governance of Climate Adaptation



# Outline

- Liability aspects
- “What is the influence of liability law on adaptation to climate change?”
- Resilience
- Two case studies
  - Dune reinforcement Noordwijk
  - Peat dykes (droughts)
- Two hypotheses
- Interviews and document studies
- Conclusions (on functions of liability law)

Consortium Governance of Climate Adaptation

# Dutch liability law

- *Unlawful* and *lawful* acting
- Liability for damages due to violating rules of conduct (unlawful)
- Also for *not* acting (unlawful passivity; not taking adequate adaptation measures)
- Liability for damages due to lawful acting (taking adequate adaptation measures)
- Compensation of loss (“nadeelcompensatie”)

# Functions of liability law

- Functions of liability law
  - Compensation
  - Prevention
- Assumption: 'fear' for liability
  - Avoiding damage and liability
  - Take any adaptation measures at all?
- Lack of empirical evidence

# Hypothesis 1

- “*The threat of liability for **unlawful** governmental behavior will stimulate governments in taking adequate adaptation measures, and will encourage them to investigate their (legal) responsibilities and act accordingly*”

# Hypothesis 2

- “*The threat of liability for **lawful** governmental acting will encourage governments to investigate their (legal) responsibilities and their possibilities to avoid or minimize liability, which might restrain them from taking adequate adaptation measures*”

# Case study 1

- Dune reinforcement Noordwijk
- Safety objective and (economical) development objective
- Relocation, heightening and broadening of the dune
- Ambitious but successful project
- Transparency, public participation, public support, time frame

# Case study 1

## Unlawful behavior:

- Awareness of liability for flooding or water nuisance damages
- But a strong feeling of *responsibility* for public task
- Main stimulans for acting, not liability

## Lawful acting:

- Also awareness of liability for lawful acting
- No influence on question whether to take any measures
- Influence on choice for concrete measures
- Accuracy and legal carefulness



# Case study 2

- Peat dykes
- Collapse of a peat dyke in Wilnis (2003) due to long dry period
- Large amount of damage
- (Extreme) drought seemed to be of influence
- Large-scale problem
- New challenges in science and water management policy
- Measures with strong safety objectives

# Case study 2

## Unlawful behavior:

- When and where to start?
- Prioritization of measures
- Awareness of liability, but no direct connection to liability
- Feeling of *responsibility* for public task (safety) was main stimulans for acting

## Lawful acting:

- Awareness of liability for lawful acting
- No influence on question whether to take any measures
- Measures of high/less priority → little/regular attendance to compensation of loss

# Conclusions

- Falsification of hypotheses
- Threat of liability for **unlawful** behavior does *not* stimulate governments to take adaptation measures, but a feeling of legal *responsibility* to public tasks (safety) does
- Threat of liability for **lawful** acting does not restrain governments from taking adaptation measures
- It does influence the choice of measures (if there is enough time for a well-considered decision)
- It also encourages governments to take into account a (higher) level of accuracy and legal carefulness
- Influence is rather small in cases of emergency
- TO BE CONTINUED!

# Questions?