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Indicators of Obiter Dicta

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Abstract:
In addition to *ratio decidendi* (the necessary arguments), judges are allowed to include *obiter dicta* (arguments which are superfluous) in their decisions.The interpretative decision that an argument is superfluous may be justified by reference to the verbal presentation of the argument. In this paper I discuss several words and expressions that, in legal practice, are considered to be indicators of additional considerations. Starting from a pragma-dialectical characterization of additional considerations, I evaluate some examples of these cases in order to examine which words and expressions can be seen as indicators of *obiter dicta*.

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1. Introduction

Apart from *ratio decidendi*—arguments that are a necessary justification for the decision—the court can also present additional arguments or *obiter dicta* in its judgment. After having dismissed a request to dissolve an employment contract the court may consider the following:

> The subdistrict court considers in addition that it is safe to assume that in case of repetition of these facts, the court will allow the requested dissolution of the employment contract. (Subdistrict Court Rotterdam, 3 February 1987)

In this case it is not difficult to recognize this consideration as being additional, because it is explicitly formulated as such. It is, moreover, clear that this consideration is not in immediate support of the decision but rather a warning for the defendant. Therefore, it is unlikely that if this consideration were to be criticised in appeal, this criticism would affect the original judgment. If the defendant would have directed his criticism at the ratio decidendi, the judgment could in principle have been contested. The distinction between *ratio decidendi* and *obiter dicta* is therefore of a decisive factor when assessing the chances of success for an appeal.

When analysing argumentation in judicial decisions, it may be problematic to identify additional considerations and to asses the relevance of these types of considerations. The reason is, among other things, that additional considerations are not always explicitly formulated as such. Furthermore, the various descriptions of additional considerations that are given in legal practice and in the literature do not make very clear how these considerations should be characterized. That is why these descriptions give us little to go on for the analysis of the connection between the arguments given in the judgment of the court.

It is often on the grounds of the verbal presentation that the High Court, the advocate general, or the annotator conclude that a consideration of a lower court should be considered as an additional consideration. With

reference to specific words or expressions with which the consideration is presented, they decide whether the consideration is additional or not. In this paper I will analyse some judgments in which the words *anyway* and *for that matter* and the expression *if only because* are considered to be indicators of additional considerations. I will try to find out if the interpretation of these considerations could indeed be justified by referring to these indicators. For this analysis I make use of the pragma-dialectical approach of argumentation in which Van Eemeren and Grootendorst (1983, 1991) discuss indicators of argumentative structure and in which Snoeck Henkemans (1992, 1995) presents a dialogical characterization of the relations between arguments. Prior to the analysis of indicators, I will give a pragma-dialectical characterization of additional considerations.

2. The relation between additional considerations and other considerations

In the pragma-dialectic argumentation theory, the verbal presentation of the text is the starting point when determining if argumentation is indeed put forward and also when analysing how the arguments are structured. Words and phrases like `considering that', `because of', `since', `because' and `therefore', so called indicators, may help to determine the argumentative function of verbal expressions. Indicators may also serve to subsequently make a distinction between multiple and coordinatively compound argumentation in case the argumentation presented is complex.1 In *Analysing Complex Argumentation* (1992) Snoeck Henkemans presents a dialogical characterization of these types of complex argumentation in keeping with the way complex argumentation is generated in a discussion. In multiple argumentation, every one of the arguments constitutes in itself sufficient support for the standpoint. The gist of a dialogical characterization of these independent arguments is that the arguer makes more than one attempt to defend the standpoint, motivated by a (potential) failure to refute criticism to the previous argument. Words and phrases such as 'apart from this consideration' and `moreover' are indicators of multiple argumentation.

In coordinatively compound argumentation a number of arguments, which are linked horizontally, in conjunction provide sufficient support for the standpoint. These interdependent arguments can be characterized as arguments with which the arguer tries to refute (potential) criticism raised against one or more of his other arguments. The arguments fulfil a `repairing' function for each other: the arguments that are put forward must be thought of as complementary. Indicators of coordinatively compound argumentation are, for example, `in connection with this' or `taking everything into consideration'.

Both in legal and in non-legal contexts, arguments may be introduced by means of the words 'in addition'. Van Eemeren and Grootendorst (1992: 80) propose to consider `in addition to the fact' as an indicator of multiple argumentation. The argumentation prior to the indicator, constitutes a conclusive defence of the standpoint. The second argument is put forward in case the first attempt to defend the standpoint has failed.2 The standpoint is rejected if both arguments are rejected.

In Dutch judicial decisions expressions such as `all the more...' and `leaving aside' are also considered to be indicative of additional considerations. Unlike pragma-dialectics, legal practice and literature do not consider these additional considerations to be part of multiple argumentation. It is, however, not exactly clear how the relation between such a consideration and other arguments should be interpreted. Asser (1994) for example states that additional considerations are of no influence to the decision, while Advocate General Ten Kate (Supreme Court 28-5-1976, NJ 1977, 449) points out that they are conducive to the other arguments that support the decision or may even, `be able to carry the decision independently, should the motivation falter'. So, a distinction is made between additional considerations which do and those which don't independently support the decision. An additional consideration that is in itself sufficiently convincing as to defend the standpoint, is

called an `improper' additional argument. An additional consideration that is not sufficient in itself to defend the standpoint, is called a `proper' additional argument.[3] These descriptions only point out how considerations could be appreciated in an appeal to the Supreme Court. They give no insight in the different interpretations previous to appreciation by the Supreme Court. Definitions of additional considerations are ambiguous, because no clear distinction is made between the intentions of the judge, the interpretation by the party that takes an appeal and the final interpretation by the Supreme Court. From the perspective of the judge, an additional consideration may be intended as a consideration that does not support his decision independently. On the basis of the verbal presentation of this consideration, the party appealing may analyse it as a `proper' additional consideration. In the assessment of the appeal, the Supreme Court may interpret the same consideration as an `improper' additional consideration. In pragma-dialectical terms an `improper' additional consideration can be considered to be a part of multiple argumentation. It is more difficult to give a characterization in pragma-dialectical terms of `proper' additional considerations. In order to characterize them, more insight into the relation between `proper' additional considerations and other considerations is needed. By examining the function of this kind of consideration, I will try to clarify the relation between `proper' additional considerations and considerations of a different kind.

3. The function of `proper' additional considerations

To find out what function a `proper' additional consideration may have in judicial decisions and to decide how these considerations may relate to other considerations in the decision, the following questions must be answered:[4]

1. Does the additional consideration have an argumentative function?
2. If not argumentative, what function then does it have ?
3. If the consideration is indeed argumentative, does it support the decision?
4. If it supports the decision, how is it linked with the other arguments in the motivation?

When an additional consideration does not have an argumentative function, we may conclude that we are dealing with a `proper' additional consideration. This may be the case if the judge wants to amplify on the matter in dispute. Sometimes, the formulation is a clear indication for this function.

> Additionally it should be remarked that defendants negative comments on the productivity of the draftee appear to be ill-considered. (Subdistrict Court Amsterdam, 8 March 1979)

In a recent judgment (Supreme Court 30-9-1994, NJ 1995, 260) Leijten distinguishes between two types of `proper' additional considerations that do have an argumentative function. The first `regular' type of proper additional considerations, he defines as follows:

> These considerations are intended to enforce or to support the standpoint of the judge while this is not strictly necessary according to the judge and are often not always to do with whether the relevant facts are proven or not. The other, previous considerations can very well justify the decision without these additional considerations. If these additional considerations were to be incorrect, they would not affect the judgment. They neither strengthen nor support the standpoint, nor are they in any way detrimental for that matter.

In pragma-dialectical terms these types of additional considerations should not be considered as being part of regular coordinatively compound argumentation. They do not seem to fulfil a `repairing' function and rejection of

the considerations will not affect the standpoint. It is perhaps better to characterize the relation between an additional consideration and another consideration as a specific, asymmetrical form of coordinatively compound argumentation in which one argument can do without the other, but the other cannot do without the one. The asymmetry means that criticism directed at additional considerations cannot affect the decision, whereas criticism directed at the other considerations can.

Leijten points out that these additional considerations may become important if the other, previous considerations that, according to the judge, justify the decision are not correct or do not (sufficiently) support the decision:

> If correct, they can, in such cases, take over those tasks. The judge was under the impression that the considerations had just been given additionally, whereas they were in fact sorely needed. But: if it is not put forward that the other considerations cannot justify the decision without those additional considerations, the additional considerations in general require no deliberation.

When deciding on an appeal it may turn out that the additional consideration is `improper' and that it is part of multiple argumentation. This means that in deciding on an appeal it should be assessed whether the relation between an additional consideration and the other consideration(s) that are contested in appeal is considered to be an asymmetrical form of coordinatively compound argumentation or multiple argumentation. The second type of additional considerations mentioned by Leijten, are considerations which decide or which give an indication to decide on cases that are not covered by the rule that is applicable in the case at hand. According to Leijten these `defining-considerations' often appear in the following model-form:

> `It would (could) be different if..., but nothing of that has become manifest in this case.'

He argues that in fact we are dealing here with an *obiter dictum*, because the consideration is outside the realm of the support of the decision. However, from the perspective of the party that has lodged an appeal against the decision it does not seem the most obvious option to analyse these types of considerations as being outside the realm of the decision. In a dialogical characterization of this argumentation, the judge anticipates criticism directly aimed at his decision and implies that his decision should be different. He refutes the criticism by showing that the conditions under which the standpoint could have been different, are not apparent in this case. So, the judge's argumentation consists of both considerations that are in defence of the decision (pro-argumentation) and of the refutation of counter-argumentation (i.e. it would not be different if...). The relation between these arguments is most likely to be interpreted as coordinatively compound argumentation: if the edge is taken off of one of both arguments, the standpoint is to be refuted.5 Furthermore, this interpretation is in accordance with what Leijten himself suggests about the defence that could be set up against this type of additional considerations. He states that a party could, in appeal, successfully put forward that: `conditions have indeed been apparent'. In other words: the applied rule does not hold. And if the rule of the *obiter dictum* should be applied, it will lose by the same token its capacity of *obiter dictum*.

This second type of additional considerations is closely related to additional considerations in which the judge anticipates objections to the consideration he puts forward to justify his decision. Taking the model-form of the previous type of additional considerations as a starting point, the model-form here could be formulated as follows:

> 'Matters would not be different if..., even if....'

Considerations following `even if' anticipate possible objections. The judge makes clear that even if the first

argument would be challenged successfully, he would maintain his decision because of the other argument. The considerations should therefore be analysed as multiple argumentation.6

Both types of additional considerations can be considered as 'anticipating' argumentation. By anticipating arguments the party that was ruled against could have put forward or might put forward, the judge can try to prevent possible future disputes.7 However because the refutation of these types of additional considerations can in principle lead to nullification of the decision, they cannot, as a matter of course, be considered 'proper' additional considerations.

4. Indicators of `proper' additional considerations

In appeal cases in particular, it is of great importance to establish whether a decision is based on more than one ground and if so, to ascertain their relationship. In case a contested judgment is founded on two or more independent grounds, a cassation appeal can only succeed if all grounds are contested successfully. In Dutch legal practice it frequently happens that in appeal only one of the arguments is contested because the other is interpreted as being superfluous. If the Supreme Court interprets this other ground however as an independent support of the decision, then the conclusion is likely to be that the party does not have an interest in an appeal. Nor does a party have an interest in an appeal if it is only the additional ground that is contested.8

Veegens/Korthals Altes and Groen (1989: 291) emphasize that the verbal presentation of a consideration is not always decisive to determine whether it is indeed additional or not. In legal practice however, and especially in conclusion of advocate generals, it appears that the interpretation is nevertheless justified by a reference to the verbal presentation of the consideration. According to Winters (1992: 145) but also according to Veegens/Korthals Altes and Groen themselves, 'leaving aside', 'all the more', 'all the less' and 'moreover' are expressions that are used to indicate that a consideration is presumed to be additional. In jurisdiction too, expressions such as 'if only because', 'anyway' and 'for that matter' are considered to be indicative for additional considerations. On the basis of several examples I will try to find out whether these expressions are indeed an indication of 'proper' additional considerations and therefore are an indicator of (asymmetrical) coordinatively compound argumentation or a mere verbal expressions that does not have an argumentative function.

4.1 If only because

In a dispute between De Vries Ltd. and Kuijt that arose as a result of an industrial accident in the factory of De Vries Ltd. (Supreme Court 29-4-1983, NJ 1984, 19), we find an example of the importance of the indicator *if only because*. Because of the fact that the shutoff valve of a hydraulic kettle came off and the content of the kettle hit Mr Kuijt, he sustained serious injury. Under the provisions of article 1638x, the court has awarded compensation. The court argued thus:

> 11. These facts imply that an expert that could have been consulted, knowing the corrosion-sensitivity of bronze for ammonia, would have realized that there was a risk of this essential part of the shutoff valve corroding, (...)
>
> 12. By omitting to seek such an expert advice, and subsequently take appropriate action, the

responsibility for the accident to have taken place lies with De Vries.

13. That the Service for Steam Engineering did not warn De Vries does not lead to a different conclusion, if only because De Vries could not have expected the Service to interfere with all chemical aspects of the process and/or the working conditions in the workshop of De Vries.

De Vries Ltd. lodges an appeal in cassation in reaction to the court's decision. De Vries Ltd. is of the opinion that the consideration that she could not have expected the Service to interfere with all aspects of the working conditions in the workshop, is not acceptable for a number of reasons. In his conclusion Advocate General Mok assesses this objection as follows:

> One may find the second ground under 13, where the court says that De Vries could not expect the Service for Steam Engineering to interfere with all chemical aspects of the process and the working conditions in the workshop. The court included this second ground in addition, which becomes clear from the words "if only because". From the mere fact that the second ground is an additional consideration, it follows that the objections developed against it in this part of the argument, in themselves cannot in any way lead to cassation of the challenged judgment.

The questions is whether *if only because* is indeed to be considered as an indicator of an additional consideration. If a writer introduces the argumentation that supports his standpoint with the expression *if only because*, he does not seem to use this expression solely to indicate that he will justify his standpoint with complex argumentation. In principle, the standpoint preceding *if only because* can be justified by single argumentation, as is shown in example (1).

> (1) I think that you should not ask David to come (r), if only because he does not speak Spanish (P).

By using *if only because*, the writer implies that although apart from argument (P) he could just as well have mentioned other arguments that are in favour of his standpoint (r), but that the argument (P) in itself constitutes sufficient support for the standpoint. So he does not explicitly anticipates possible objections against his argument. At the most he anticipates those objections implicitly by indicating that the other arguments he could have mentioned would at least have the same argumentative strength as the argument (P) which was made explicit. If, apart from argument (P), he would have put forward yet another independent argument (Q), the use of the expression *if only because* does not seem very adequate.[9]

> (2*) I think that you should not ask David to come (r), if only because he does not speak Spanish (P). Apart from that he is unsociable (Q).

The expression *if only because* can be followed by coordinatively compound argumentation, but then the relation between those arguments would be made clear by the indicator with which these two arguments are linked. In (3) the word *and* is an indication of the relation between the arguments.

> (3)I think that you should not ask David to come (r), if only because he does not speak Spanish (P1) and he does not like paella (P2).

An argument that follows *if only because* may be part of a complex argumentation if a substandpoint instead of a standpoint precedes *if only because*, as is the case in (4):

(4) I think that you should not ask David to come (r): he cannot participate in a conversation (P). If only because he does not speak Spanish (Q).

Argument (P) is put forward in support of the standpoint (r). Because the argument (P) then is justified by means of argument (Q), (P) acquires the function of substandpoint. The two arguments that are linked by *if only because* are subordinatively combined into a compound argumentation.

This situation resembles the case in the example of De Vries Ltd. The standpoint `the responsibility for the accident lies with De Vries', is justified by the argument `by omitting to seek such an expert advice'. The court adds to this argument that the failure of the Service for Steam Engineering to warn De Vries, does not lead to a different conclusion. The court thus anticipates possible criticism aimed at the argumentative strength of his first argument. The court refutes the criticism that the argument of `the Service for Steam Engineering not warning De Vries' should be of more importance than the argument, `De Vries omitted to seek such an expert advice'. This refutation is justified by the argument that follows *if only because*. In other words, *if only because* in this example indicates a single argument supporting a substandpoint, and for that reason cannot be considered as an indicator of an additional consideration.

4.2 Anyway

In an annotation to a judgment of the Supreme Court (Supreme Court 3-6-1994, NJ 1995, 342) Snijders points out that the word *anyway* in the argumentation of the delegated judge indicates that this argument should be interpreted as an additional consideration. Snijders remarks:

> This argument, which is presented as an additional consideration by using the word "anyway", in cassation is no matter of complaint (...). It can remain undecided whether this additional consideration gives independent support to the decision of the delegated judge (...) anyway, in this case I am inclined to answer that question in the negative.

This case deals with an involuntary liquidation on the Netherlands Antilles. The Netherlands Antilles (the country) requests the delegated judge to extend the term of one month, within which the country should exercise its rights as first hypothecary creditor, by one month. The delegated judge denies the request. In his decision he argues as follows:

> From the documents that are available at present it is not apparent that the public legal person The Netherlands Antilles at the time of the creditors' meeting or by then on account of the contract of suretyship was or has been called upon, in which case it is not apparent for the legal person to have a claim on the bankrupt company.
>
> Anyway, the record of the meeting of creditors that was arranged on 27 May 1993 shows that a claim had indeed been submitted, but that it was withdrawn at the time of the meeting. (Supreme Court 3-6-1994, NJ 1995,340)

The consideration following *anyway* raised no complaints, but that does not alter the question whether *anyway* may be considered as an indicator of an additional consideration. According to Van Eemeren and Grootendorst (1992), *anyway* is an indicator of multiple, independent arguments. In her analysis, Snoeck Henkemans (1995:

185) confirms this conclusion by making use of the semantical analysis of the word *d'ailleurs* given by the French linguist Ducrot. This analysis is illustrated by means of the following example.

> (5) I don't want to rent this room (r): it is too expensive (P) and anyway, I don't like it (Q).

P and Q are advanced in support of the same standpoint (r). Snoeck Henkemans points out that by using *anyway* the arguer gives with retrospective effect the impression that the first argument (P) in itself would have been sufficient. He adds nevertheless a new argument (Q), with which he indicates that he takes into account that others may have doubts about the cogency of the first argument (P). Snoeck Henkemans states that by using *anyway,* the arguer can indicate that the dialogical situation he is anticipating is precisely the situation which gives rise to multiple argumentation. The rejection of one of the two arguments would not affect the standpoint. From this point of view the word *anyway* is not an indicator of an additional consideration, because each of the arguments is a separate attempt to defend the standpoint.

The question is whether this conclusion can be confirmed in the dispute about involuntary liquidation I mentioned above. The delegated judge seems to consider the argument (P), 'that the country neither was or is called upon [by the creditor]', as a sufficient justification of the standpoint (r) 'that it is not apparent that the legal person has a claim on the bankrupt company'. By adding after *anyway* `that the claim that had been submitted, was withdrawn at the meeting' (Q), the delegated judge indicates he is anticipating the situation in which the country would indeed have been called upon and thus rendering the first argument incorrect. If this situation would have occurred, the fact remains that the claim that had been submitted, was withdrawn at a later stage. So, in cassation a complaint would only be successful if it were possible to establish that the country had indeed been called upon and the claim that had been submitted was not withdrawn at a later stage. It would not be correct in this case to consider *anyway* as an indicator of an additional consideration to which a complaint is of no use.

4.3 For that matter

In a large number of decisions the phrase *for that matter* is considered to be an indicator of an additional consideration. The Advocate General in one of these decisions concludes:

> The opinion of the court that the consideration of the president of the court in question was given additionally, is by no means unintelligible, if only because this consideration is introduced by the words "for that matter". (Supreme Court 8-10-1994, NJ 1994, 508)

The phrase *for that matter* is, just like *anyway*, a conjunctive adverb that finds a logical connection between (parts of) sentences. According to most dictionaries and linguistic textbooks *for that matter* can be synonymous with *anyway*. It can be used to anticipate the rejection of a previous argument. In the pragma-dialectical argumentation theory *for that matter* is considered to be an indicator of multiple argumentation. This explains why one could come to the conclusion that a consideration is self-supportive despite the fact that it was introduced by *for that matter*, the more so when *for that matter* is taken to be synonymous with *anyway*. Asser, for example, comes to this conclusion in the following judgment (Supreme Court 14-2-1992, NJ 1992, 245):[10]

> In a consideration that has the appearances of an additional consideration (ground 4.13 "For that matter ...") but in my opinion supports the decision independently, the court drops a second anchor.

So, the conclusion should be that a consideration that is introduced by *for that matter* does not have the appearances of an additional consideration. This is also apparent from a judgment (Supreme Court 29-6-1990, NJ 1991, 120) in reply to an application for admission as a refugee or a person entitled to asylum. Mr Bodua demands that the Court of Appeal orders the State to admit him into the Netherlands and furthermore forbid the State to deport him as long as his request for a review has not been decided upon. In the refusal of the request the Court of Appeal gives the following argumentation.

> 4.8. The court shares the judgment of the president that in all fairness there can be no doubt about the person concerned not being in a refugee situation, whereas in all fairness there can neither be any doubt about the fact that he is not qualifying for a residence permit as a person entitled to asylum. In the first place, the account of his flight is not plausible. (...) Furthermore, there are several inconsistencies in the account of the flight. (...) These inconsistencies, for which appellant, even in this appeal, does not give a (plausible) explanation, which was his responsibility, are of so much weight that the credibility of the account of his flight is seriously affected.
>
> 4.9. For that matter, the motives for his flight too, as given by the appellant are insufficient to consider him as a refugee. (...)

Bodua appeals in cassation and puts forward a defence against the considerations mentioned above. Remarkable for judging the appeal in cassation is the inconsistency between the interpretations of the relation between these considerations by the Supreme Court on the one hand and the Advocate General on the other. The Supreme Court interprets the relation between the arguments of the court and Bodua's defence as follows:

> The decision of the court that the standard for withholding suspensive effect is met, is based on two independently supporting grounds: the incredibility of and inconsistencies in Bodua's account of the flight (ground 4.8) and the insufficient reasons he gives for his flight (ground 4.9). The judgment of the court as to the first points (the first ground) is not hard to understand and needed no further justification, so that possible complaints included in that part will fail. This implies that the court is not required to take into account what was considered and put forward in ground 4.9.

The Supreme Court interprets the argumentation of the court as having a multiple structure, from which follows that *for that matter* is not considered to be an indicator of an additional consideration. The decision of the court is not affected because the complaint against one of the two independent arguments fails, but not because of a supposedly mistaken complaint against an additional consideration. But unlike the Supreme Court, the Advocate General interprets the considerations of the court as asymmetrical coordinatively compound argumentation.

> Although part C of the grievance appears to be well-founded, it still does not lead to the quashing of the contested judgment. Ground 4.9 (starting with the words "for that matter") is, as it happens, an obvious additional consideration, that does not support the decision of the court.

In this way the Advocate General comes to the same conclusion as the Supreme Court, albeit via a different route. He too is of the opinion that the conclusion of the court is unaffected, but he justifies his standpoint by arguing that the complaint is directed at an additional consideration. The result of this is that the decision would have been quashed according to the Advocate General if the first ground had been contested successfully, whereas the Supreme Court is of the opinion that the decision would only have been quashed if both grounds had been contested successfully. These differing interpretations are an indication that an argument preceded by *for that matter* need not always be an additional consideration.

5. Conclusion

By using a pragma-dialectical characterization of the connection between arguments, I have tried to give more insight into the distinction between `proper' and `improper' additional considerations. On the basis of the various functions additional considerations may fulfil in legal practice, it can be explained why the connection between additional considerations and other considerations can be analysed as (asymmetrical) coordinatively compound argumentation or multiple argumentation. In my view three of these considerations are undoubtedly 'proper' additional considerations. First there are the considerations that are part of asymmetrical coordinatively compound argumentation which do not separately support the decision. Secondly there are independent considerations in support of standpoints not within the scope of the decision. Thirdly there are the considerations that do not have any argumentative function. Complaints put forward in appeal exclusively directed at these kinds of considerations, cannot result in quashing the decision.

By giving an analysis of decisions in which *if only because*, *anyway* and *for that matter* are seen as indicators of 'proper' additional considerations, I have tried to show that references to indicators in themselves are not always a conclusive justification to decide that a consideration is considered to be an additional one. The expression *if only because,* in itself, does not indicate complex argumentation and for that reason it cannot be an unambiguous clue for an additional consideration. The words *anyway* and *for that matter* are, in principle, an indication of multiple argumentation in general. So, when there are no further references to the context, they should not be considered exclusive indicators of additional considerations. It should be emphasized that *for that matter* and *anyway* do not necessarily introduce argumentation. Both indicators can also introduce a specification or an explanation (clarification) of the preceding argument, as is shown in the next example.

> I do not want to rent this room (r): it is to expensive (P). That is hardly surprising anyway (for that matter), in view of the location (Q).

In this example, in order to justify that (Q) is in fact an additinal consideration, one should refer to the indicator *for that matter* (or *anyway*). It is rather the non-argumentative character of speech act (Q) that clinches the matter.

Notes

1. The phrasing of the statutory rule and references to the dialogical character of argumentation, too, may contain a clue as to the reconstruction of the argumentation structure (see Plug 1994).

2. The presumption here is that 'in addition' is followed by argumentation. This is, however, not always the case. If so, `in addition' is of course not considered to be an indicator of multiple argumentation.

3. See Winters (1992, p. 145) on this distinction. See also the conclusion of Advocate General Asser 6-11-1992, NJ 1994, 150.

4. I formulated these questions earlier to make a rough distinction between proper and improper additional

considerations (see Plug 1995, p. 65).

5. Other additional considerations not within the scope of the support for the decision, could for example concern a dispute with the legislator. They do not support the standpoint under discussion, but may be put forward in view of the jurisprudence. In an argumentative analysis of the justification of a decision, this kind of arguments can be ignored.

6. For a more extensive explanation and an example of this type see Plug (1995, p. 8).

7. In an annotation to a judgment of the district court's-Gravenhage (19 November 1985) Hesseling remarks the following: `Additional considerations often give parties-and in some cases even the court of appeal?-a better view on legal positions. Experience shows that such considerations can reduce the chances of litigation being continued or renewed.'

8. A series of examples in which these situations occur are given by Hollander (1983, p. 124 et seq.).

9. Adding a second independent argument after *if only because* will in my opinion result in a pragmatic inconsistency. With this construction the arguer expresses that the first argument is so obvious that this single argumentation is a conclusive justification for his standpoint. Adding a second independent argument would do harm to this obviousness.

10. See for example also Supreme Court 13-1-1995, NJ 1995, 482.

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