Climate Change Litigation before the Belgian Constitutional Court

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Competences of the Belgian Constitutional Court
• Review of Acts of the Federal and Regional Parliaments
• Against the Constitution, International & European Law
• By way of direct action (6 m)
• In the form of preliminary rulings
• No concrete cases (Verfassungsbeschwerde, Amparo...)

  ◦ No discrimination of steel companies comp. with non-ferro, chemical...
  ◦ First commitment period – largest emitters
  ◦ Climate change policies justify limitations on Freedom of enterprise, Property rights
  ◦ No violation of Freedom of establishment

  Compare: ECJ, 16 December 2008, Société Arcelor Atlantique and Others

Emission Trading Scheme (1)
Emission Trading Scheme (2)

  - Federal Government should be involved (regulation of civil aviation, navigation above territorial sea)
  - Acts not respecting territorial limitations of the regions
  - A Co-operation Agreement is necessary
  - Upholding effects of annulled acts to allow for negotiation and conclusion of such an Agreement
  - Has been done (no agreement about repartition of the proceeds..)

Renewable Energy Support Schemes

- **Various judgments concerning “green certificates”**
  - There is a need to reduce greenhouse gas emissions
  - Support for the development of renewable energy fits in that purpose
  - Width margin of appreciation of the legislators
  - Techniques and related economy is rapidly changing
  - Room for trial-and-error, but respect for principle of legal certainty (investment decisions taken under the previous scheme)
Renewable Energy Support Schemes

- Fixed administrative fines per missing green certificate (comp. with missing tradable permits in the ETS) not unconstitutional
  - Not only a sanction
  - Also an economic incentive
  - This has an impact on the proportionality test

- Development of off shore wind energy justifies higher support than land based – extra costs

Biofuels and Parking Places

- Obligation to blend fossil fuels with a growing percentage of biofuels
  - No violation of Freedom of religion
  - No violation of various EU directives (Preliminary ruling ECJ)
  - No violation Freedom of enterprise
  - No violation Free movement of goods

- Reduction/limitation of car parking places in the Brussels Capital Region in the framework of environmental permits is justified
Nearly all cases brought by industry

- Unhappy with climate change obligations
- Seeking more support for their type of renewable energy production

Climate change policy is an overriding public interest, that justifies restrictions on various rights and liberties

Differences in treatment can relatively easy be justified especially in the earlier stages of policy development

Conclusion

Emerging climate change law can be construed in a manner that is compatible with fundamental principles of states based on the rule of law

Constitutional Court is a “negative” legislator – room for positive law making is limited

No Urgenda type of remedies are available to the Court

Conclusion
THANK YOU!