

Challenge?

regulatory challenges of

IKEM

Climate Change

Is Law Able to solve a Global and Intergenerational Challenge?

International Conference

Legislating for Tomorrow: How comparative law may contribute to solving regulatory challenges of our time

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I. The global challenge of climate change and the law

Climate change and its consequences are one of the biggest threats and challenges for mankind

What On Earth!™

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I. The global challenge of climate change and the law

Meanwhile, there is a quite solid consensus in research, politics and also international law regarding necessary greenhouse gas mitigation goals

Article 2 Paris Agreement

This Agreement ... aims to strengthen the global response to the threat of climate change ... including by: Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change...

More and more countries set binding climate neutrality goals, e.g. Germany 2045, EU 2050

II. Climate law comparison and international climate law

Greenhouse gases are relevant in their global sum in their effect on rising temperature; thus, mitigation efforts need global cooperation; national climate (mitigation) law must be integrated in a global regulatory concept (while climate adaptation law is – in principle – also feasible on a purely national level).

A central challenge for climate (mitigation) regulation is linking the international legal framework with national legal orders (including supranational ones like EU)

II. Climate law comparison and international climate law

UNFCCC not enough or a success story?

Background: international law is necessarily based on consensus

Positive aspects:

- Setting up a convincing goal (Article 2) to be concretized in subsequent protocols
- Setting up convincing and powerful principles, like the principle of common but shared responsibilities

II. Climate law comparison and international climate law

How to get to legally binding commitments of national states?

The approach of binding international mitigation obligations had to fail; this could have been predicted in a rational choice perspective

e.g. Kyoto Protocol

States reluctant to binding mitigation commitments – only industrial states agreed on rather moderate commitments

Russia has more or less been bought by insane concessions („hot air“)

In the end no enforcement possible – see the case of Canada

II. Climate law comparison and international climate law

How to get to legally binding commitments of national states?

The Paris Agreement established a viable bottom-up system based on formal principles

Pledge and review mechanism: “Nationally Determined Contributions” NDCs every five years; Article 3 requires “ambitious efforts”

Principle of progression: no step back

Public register and reviewing system

Global stock-take assessing progress (first time 2023)

III. EU climate law

Climate policy is subject to a shared competence between EU and its National States (based mainly on the environment and energy competences, but also market harmonization, trans-european networks and others)

On this basis, the European Union has established a significant body of climate law with a very sophisticated set of instruments, e.g. emissions trading with border adjustment, innovative command-and-control policies like fleet standards for cars, innovative informational instruments like labeling or information disclosure

EU is constantly adapting and reinforcing them (important round of “Green Deal” and “Fit for 55”)

IV. Worldwide converging national climate laws

In several waves converging concepts for national climate laws were established
Based on insights of law and economics policy instruments were developed and framed for legal implementation; law comparison played an important role

Recent developments:

- general climate laws
- climate litigation based on human rights

VI. Main challenges for the law on the road towards reaching climate goals

International law: Legal framework is to a large extent established - amendments needed in the area of climate finance and flexible mechanisms: but more political will needed

EU law: Legal framework to a large extent established; political will needed to accelerate ambition and adapt law accordingly

National law: Sector coupling and storage; import schemes for green energy; long planning horizons and short-term democratic legitimation

V. The special function of law comparison in the area of climate change

To decarbonize economies and societies worldwide adequately fast needs a radical transformation of legal orders. To identify and design suitable regulatory schemes law comparison is indispensable (too much time would be lost in working independently).

International law: Law comparison necessary to analyze NDCs

EU: It is a special challenge for law comparison to identify the remaining leeway for national legislators and concepts how to fill them

There are quite different pathways to decarbonization (renewables, nuclear, CCS...). For transferring regulatory schemes the general climate mitigation strategy has to be taken into account. This means that a broad concept of law and policy comparison has to be applied.

Thank you very much for your attention!