

The jurisprudential horizon of Polish abortion ruling of 2020

The jurisprudential horizon of Polish abortion ruling of 2020: introducing religious reference by an imposition of continuity

prof. Marta Bucholc, nagranie Seminarium Katorep #8

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On 22 October 2020, the Constitutional Tribunal of Poland ruled abortion due to foetal impairment unconstitutional. I will use the concept of jurisprudential horizon to explain the interplay of religious reference frames with other references framing this ruling, especially international law and human rights, but also contemporary political and social philosophy. Based on a close reading of the Tribunal's ruling and the dissenting opinions, I will argue that the Tribunal's decision is yet another symptom of the crisis in which the rule of law in Poland has found itself since 2015. It bears evidence to the closing of the jurisprudential horizon caused by the political change which has been taking place in Poland since 2015, consisting of the reduction of the role of international human rights debates as a reference in Polish constitutional jurisprudence. Retrospectively, the rulings can therefore be seen as a portent of Poland's compliance issues with its international commitments in human rights matters which came up in 2021 and 2022. At the same time, I will argue that the ruling expands the horizon of constitutional jurisprudence towards religious argumentation by using a rhetorical technique which I will call "the imposition of continuity".

Marta Bucholc is professor of sociology at the Faculty of Sociology, University of Warsaw, and associate researcher at the Centre de recherche en science politique, Université Saint-Louis Bruxelles. From 2015 through 2020 she was research professor at Käte Hamburger Centre for Advanced Studies „Law as Culture“, University of Bonn. She was visiting scholar at the universities of Jena, Cambridge, Graz and Saint-Louis Bruxelles, as well as Bronisław Geremek Fellow of the Institute of Human Sciences in Vienna. Her research focus is sociology of law and historical sociology. She is the principal investigator in a research project "National habitus formation and the process of civilization in Poland after 1989: a figurational approach" funded by Polish National Science Centre, and the Polish PI in the Volkswagen Foundation project "Towards Illiberal Constitutionalism in East Central Europe: Historical Analysis in Comparative and Transnational Perspectives". Her research project "Using Human Rights to Change Abortion Law: Involvement Patterns and Argumentative Architectures in the Global Figuration of Human Rights (Abortion Figurations)" was retained for funding under ERC Consolidator 2021 program.

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