«Willing that the Guard of Law should be responsible to the Nation for their action…». Justiciability of power in the Era of Polish May Constitution of 1791

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Introduction

Legal responsibility of the authorities was the third subject introduced by a group of researchers of the «ReConFort», next to the issues of sovereignty[1] and constitutional supremacy[2], with which it remains inseparably linked. It regards the issue that the *constitutive decisive moment* of the end of XVIII century although did not turn the legal poles completely, irrevocably removed the legal status. The subordinates obtained the civil status. which means that the responsibility vector completely changed. From that moment on, the ruler needs legitimacy. The constitutions bring new, ground-breaking regulations, which define the scope and forms of the authorities' actions, whereas in case of violating substantive and procedural regulations, the real sanctions are introduced, for the first time in the modern state era.

The case of the Republic of Poland (The Polish-Lithuanian Commonwealth) was in some sense exceptional, because even though the Constitution of 3 May 1791 (formally: Government Statute) happens to be perceived as one of the first in Europe, representing modern constitutionalism, then in many matters it is a «half way» act that combines the old and the new orders through a «mild revolution». Its origin resulted from the reformatory movement that renounced violence and terror and opted for conciliarity as well as the development of a new political reform through dialogue and the process of self-limitation by the nobility. In many aspects, the constitutional regulations may be perceived as too careful and hiding the old order under the umbrella of modern wordings. Nevertheless, the elements of the old Polish tradition and later the Great Sejm Reforms regarding the responsibility of the authorities, for sure should be placed in the avant-garde of the constitutional changes.

The methodology used by the ReConFort and the specificity of researching the Polish sources have been already described

in the earlier volumes[3], thus there is no need to repeat these remarks. It should be however recalled that in the case of research on the Polish Constitution of 3 May, the researcher cannot verify the practice of functioning of the relevant legal sources. The Constitution was factually in force only for a year and a half, its resolutions were formally replaced by cardinal laws enacted by the Sejm in Grodno in 1793, hence it is unknown how its provisions would work in practice. Therefore, an analysis can be conducted with respect to the roots of legal responsibility of the authorities, pointing out the voices in journalistic and parliamentary discourse (usually identical) concerning relation among the organs as well as a process of shaping their responsibility and the principle of legalism to eventually recall specific decisions of the Great Sejm relevant for the analysis.

1. *Earlier forms of legal responsibility of the authorities in the Polish Republic*

The solutions of the Governmental Statute – because this title was the official name of the Constitution of 3 May – did not arise just like that, deus ex machina. They were deeply rooted in the past solutions, in the premise *Lex est Rex in Polonia et in Lithuania*, i.e. the principle of the supremacy of law (rule of law), which is classified by Wacław Uruszczak as one of the fundamental principles of the political system of The Polish-Lithuanian Commonwealth[4]. The subordination of the King and civil servants to the law was considered to be the most obvious. It had been already introduced in the *constitutions* (this was the formal name of Parliamentarian statutes) of 1565 that the authorities who were neglecting their duties and violating the law, were responsible before the Sejm Court, consisting of the King and deputies. The Henrician Articles of 1573, in turn, provided for the right to terminate obedience in case of breaking the law by the monarch (*articulum de non proestanda oboedientia*).

An element of this system was also constituted by securing compliance with the law by the courts and Tribunals: Crown[5] and Lithuanian, which were obliged to base their decisions on legal grounds. The creation of law by the courts was considered unacceptable; in such situation the extraordinary procedural measure could be applied (*ex vi legis* complaint), a prototype of the cassation complaint that protected from the arbitrariness of the courts[6]. The custom of placing the law collections in a visible and accessible place in the Tribunal's chamber was a symbol of respect for the written law[7]. Setting up the Tribunals as the highest courts against the nobility mirrors the idea that «*iustitiam non rex, sed republica dispensat*»[8]. Another expression of this idea was the fact that the Tribunal judges were selected by the nobles. For example, Wacław Uruszczak quotes Stanisław Staszic who called for selection of the judges «by the same citizens who will be judged by him», because «there is no equality, freedom and ownership and human rights are violated, where one citizen has an authority to appoint judges for own fellow citizens»[9]. The disagreement concerning the way of selecting judges in the further epoch of the Great Sejm reforms will be discussed in the later part. At the same time, already in 18th century, the practice of the Tribunal's work, in particular the multi-

tude of cases («countless cases have been thickened in the Crown Tribunal»[10]), an excessive length of proceedings, corruption and abuses related to the selection of judges (magnate fractions aimed at choosing own clients) grew into a real problem that was tried to be counteracted by means of the Sejm constitutions. The «correction» of the Tribunal system was called by manifold Dietines instructions[11] and extremely critical voices in journalism[12].

In theory, the Sejm remained the control authority in relation to the ministers. In practice, however, the implementation of this function was limited to controlling accounts of the Minister of Treasury and Finance, and from the middle of the XVII century, the deputies were active alongside the hetmans. In the periods between the Sejm sessions, a control authority for the King was supposed to be hold by senators-residents. The monarchs, however, quickly started to use this body for own goals, at least until the constitution of 1641[13]. The Sejm control after 1764 became more efficient. On the one hand, the Sejm more and more supervised the executive, on the other – a group of organs coming from the election of the Sejm expanded. In Parliament, under the leadership of the Ministers of Treasury and Finance, the Tax Commissions were established. They consisted of the representatives of the Senat, higher Chamber, and for the most part – the Chamber of Deputies, who were entrusted with the control of state finances. Next to them, the Military Commissions were established, thereby fully limiting the up to now independent hetmans. The latter were also deprived from the law of diplomatic activity. The regional councils (Dietines) considered the aforementioned changes as


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RZĄDOWA.
PRAWO UCHWALONE.
Dnia 3. Maia, Roku 1791.
w WARSZAWIE,
w Drukarni Uprzywileiowaney M. GRÖLLA,
Xięgarza Nadwornego J. K. Mci.

Polish May constitution, Warsaw 1791

an interference with the Sejm powers and striving for subordinating the commissioners directly to the regional councils (Dietines). In 1766, obtaining the right to present a quadruple number of candidates, the King obtained a higher influence on the appointment of commissioners. From 1768, it was not allowed to combine the functions of commissioners and deputies; two commissioners were supposed to take part in the deliberations, during which the activities of the Commission were controlled and the commissioner – senators were not allowed to vote on the matters related to the

Commission represented by them. Initially, however, the effects with regards to the responsibility of the Commission chairmen were not clarified, only the reporting obligation of the committee was mentioned[14].

In 1775, in the time of the so-called royal-ambassadorial rule, in fact a Russian protectorate, the Permanent Council[15] was established as a collective body of the executive. Next to the King, it consisted of the representatives of two chambers of Parliament, who were chosen in secret elections. Art. VI of the Law on the Permanent Council provided for its responsibility: «If the Council had exceeded the limits of its power, councilors would be judged at the Sejm by the Sejm Courts as a *pro-crimine status* and punished under the former laws»[16]. None of the councilor could be selected to the Sejm Court. Nevertheless, this issue raised doubts already at the stage of creating the law on the Sejm Courts – although the responsibility of the Council members was demanded, it was pointed out that it was impossible to assign it individually, when according to the law, the Council was voting secretly. The legislator's responsibility and the possibility of dissenting opinion was proposed. Eventually, the secret voting within the Council was decided personally by Russian ambassador Otto Magnus von Stackelberg and the secretary of the Embassy, Jakow Bułhakow, who was opposing rejection of secrecy in the course of legislative work[17].

Contrary to what was originally expected, the Council itself did not become the central government, the key body of the executive, because the full subordination of its parliamentary Commissions and the hetmans was not implemented. These bodies performed, in fact, the direct administrative management. The Council could order them to execute the law, admonish them or in the last resort, bring ministers or the «jurisdiction», i.e. the commissioners, before the Sejm Court[18]. It was not easy for the Council to impact particularly the Military Crown Commission, dominated by hetmans Rzewuski and Branicki; in this respect, the open conflicts were occurring[19]. The Tax Commission was also criticized by the Council with regards to the decisions concerning the so-called 'amounts of Ostrogski family'. However, when in the late spring 1775, the Council wanted to reach for the possibility of appeal to the Sejm Court, it turned out that the appointment of the latter caused some obstacles. The Great Crown Marshal Stanisław Lubomirski refused to execute a royal decision, arguing that the judges were to make an oath after the election on the Sejm, that the term of office was to start on the Sejm, and pointing out, that he *ex officio* remains the «guard of law». With regards to the conflict, some of the deputies and senators failed to take the oath, but eventually the «court jurisdiction foundation» of the Sejm Court came into effect[20]. In February 1776, the Permanent Council broadened its privileges, by means of providing a possibility to bring before the Sejm Court not only ministries but actually everyone opposing its decisions. In this way, the earlier fears came true. The expansion of the Council powers on the judicial and legislative fields and the real breaking of the existing rules met with a criticism in journalism[21]. Although the changes concerning the Council responsibilities were proposed regularly on the subsequent Sejms, some of the projects were not even considered[22].

The prevailing opinion in the literature is that in the context of the abovementioned circumstances, the responsibility of this body was rather of illusory character, even though the deputies devoted much time to the analysis of the Council work (granting discharge). The legal grounds of this state of affairs were summarized by Katarzyna Bucholz-Srogosz: the already mentioned secret voting and the lack of possibility to record opposing votes, the elections for the new composition of the Council held before granting discharge as well as the lack of a procedure enabling the councilors to be suited before the Sejm Court. Only a few Council acts were repealed and none of its members was suited before the Sejm Court[23].

Formally, the Tax Commissions of the Crown and Lithuania as well as the National Education Commission (Pol. Komisja nad Edukacją Młodzi Szlacheckiej Dozór Mająca or Komisja Edukacji Narodowej, - KEN) were accountable to the Sejm. The KEN that was appointed in 1775 was to report for the first time not until 1780, and the Sejm of that time was to decide whether to accept the report and whether to retain the composition of the Commission. These forms of control were generally systematically enforced[24].

2. *Reforms of the Great Sejm 1788-1792 and the problem of legal responsibility*

2.1. *The responsibility in the early drafts and constitutional acts*

The Governmental Statute was enacted in May 1791. This was another attempt of ordering the constitutional principles of the state, because the works in this scope had been already conducted in the earlier phases of the Great Sejm. To give an example, on 24 December 1789 the *Principles for the Improvement of the Form of Government*[25] were enacted, which constituted an indication to form the government by the appropriate Deputation. They posed a temporal victory of the more conservative direction, which prevailed over liberal competition represented by «patriots» who were gradually uniting around King Stanisław August Poniatowski. The key figure of this group was Lithuanian Marshal Ignacy Potocki, educated in Rome, a talented magnate with a decidedly anti-Russian attitude. It was him, as the leader of the abovementioned Deputation, who was entrusted with preparing the draft of the Principles that in the original version expressed the ideology of egalitarianism and republicanism. The draft was, however, criticized and the reformatory blade was blunted. The notion «citizen» was replaced by the «state of nobility» and the provisions on equality of the nobility were introduced, whereas Potocki had proposed to deprive the privileges from the noblemen without property, which would give an opportunity to evolve from the noble republicanism to a civic, modern type. Furthermore, the principle of election of the ruler that had been deliberately omitted by Potocki, was introduced to the «Principles»[26].

The resolutions regarding supervision of the Guard of Laws and public magistrate refer to the accountability of the power. «Deliberating» over their activities and the duty to «behave oneself» from the post before the Polish Republic was included to the fundamental systemic principles (1mo). This obligation resulted not only in the in-

sight of Parliament but also in punishing a possible crime that would occur before the Sejm Court with respect to the «description of all cases and legal proceedings within its competence». The discussion about the Court itself will be mentioned below. In the changed version, the *Principles* did not satisfy either the first drafters or the conservative camp centered around the hetmans; they were, however, a step forward in bringing disappointed Potocki with the royal camp.

Potocki and the reformers being close to him were aware of the necessity of depriving the Sejm of the executive functions, which is why they left it only the supervisory functions. Following this attitude, Potocki submitted a proposal of setting up a provisory body named the «Extraordinaire Administration of State Security» that would be active during a possible participation of Poland in the Prussian-Austrian war until the peace settlement. Heading the Commissions and the army «Administration» was to act under the leadership of the King and to make decisions in the voting. Having faced the widespread criticism of the outline of his project, Potocki resigned. He was charged with the monarchic and authoritarian ideas, patterned upon the Swedish coup d'état, even though he suggested a possibility of dismissing the Administration by the Sejm[27].

Potocki's opponents pressed on an urgent preparation of a comprehensive state system draft, indicating the deadline of the mid-1790. This task was impossible to implement. In June, Potocki proposed barely a part of the chapter on the Sejms. However, the opponents demanded that the work begin with the adoption of «cardinal laws», constitutional principles determining the overall systemic-political relations. Potocki, however did not want to introduce these rules so as to remain uncontrolled. Eventually, within three months, he submitted the extensive *Draft of the Form of the Government* (*Projekt do formy rządu*) that was over 600 articles long[28].

In the first part titled *the Constitutional rights and cardinal laws among them*[29] the rule of law principle was confirmed: «there is and there will be no Law and no rule in the Republic that would not follow from the clear will of the Government or a clear Statute and having a precisely defined aim and the limits» (Art. XI. The notion of «government» shall be defined as a political system, written in a positive law). Next to the King as the executive authority, the Guard of Laws, consisting of 12 persons was to be appointed. This body was to be accountable to the Sejm that had a power to suspend the ministers (members of the Guard of Laws) activities if those would go beyond the statutory limits, to «bring it back to the proper activities within the legal scope» (Art. XXXVII). The Guard of Law was not allowed to exercise the «legislative power, the power to interpret rights, and the judicial power» (Art. XXXVIII). Next to the Guardians, the ordinary activities of the executive authority were to be entrusted to four great Parliamentary Commissions (Police, Military, Tax and Educational) that were also to report their activities to the Sejm, following the specific procedures. In this part, the proposal guaranteed extensive freedoms to the nobility.

The proposal did not take a liking of either the conservatists, who criticized the violation of equality of the nobility and the succession to the throne (literally, the throne was to be «Elective in choosing the

Familia for the highest royal dignity», Art. XXIV), or the monarch who was aiming at strengthening his position by means of the confirmation of the prerogative of appointments to offices, that had been taken away by the Permanent Council at an earlier time. Even Potocki himself deplored the effects of his work for other reasons – in his opinion, the character of the proposal was too abstemious, which is why he compared it to the products of Enlightenment ideologies in the West. The proposal in the submitted shape, however, had no chance of widespread support. Shortly, the King acquainted a political advantage – the Sejm confirmed his appointment authority, guaranteed in *pacta convent*, whereas Potocki's proposal had confessed them to the Sejm in order to neutralize the possible absolutist impulses of the monarch. The middle nobility, however, showed more trust in the King than in his magnate 'brothers'[30]. After long discussions, 11 articles of the so-called cardinal laws of the extensive proposal were eventually accepted. Due to the fact that Marshal Stanisław Małachowski, the reforms supporter, put the publication off, they were published after dunning in January 1791.

The inviolable cardinal laws[31] confirmed a conservative vision, aimed at maintaining the exclusivity of noble privileges, including the right to «free elections of the Kings» and the freedom of speech of every nobleman on the regional councils (Dietines) and the deputies on the Sejm. Art. VIII expressed the rule of law principle differently from the one in the proposal: «Nothing can be accepted as the law and the rule in the Republic states that would not follow from the clear will of the Republic expressed on the Sejms. No governmental authority can command and force to execute the orders if those would not follow from the laws. It will not be allowed to let itself and anyone else what the laws prohibit. It will neither neglect nor let neglecting what the laws command to perform».

The other parts of the proposal constituted the future basis for the work on statutes of the so-called 3 May system: the constitution-related statutes, such as laws on the Sejms, regional councils (Dietines), on the Guardians and on the commissions.

2.2. *Institution of the Sejm Courts*

The Sejm Court accompanied the development of Polish parliamentarism for centuries. From the end of XV century, the tribunal of the Kings and senators (in the role of assessors), called *iudicium regale conventionale*, reached the rank of the supreme jurisdictional authority. The Court maintained its meaning despite appointing the Tribunals – Crown and Lithuanian. Its sessions were conducted parallelly to the General Sejm summits. Its jurisdiction encompassed the crimes against the King (*crimen lease maiestatis*, in such cases the King was excluded from the bench), treason against the state, tax frauds, crimes in which the nobles were punishable by death, disruption of public order, i.e. violation at the Sejm and in the Tribunal, finally violations of the law by ministers[32]. The judicial composition of the Sejm Court evolved – at the beginning, the adjudicators were the King with senators (when the King was not participating in delivering the judgement, after the institution of appeal was introduced, in many cases it was appealed to the court

with personal participation of the King) and 8 representatives of the Deputies' Chamber, appointed by the Marshal; this number will increase in the future.

The new regulation and the revival of the Sejm Courts were brought by the constitutions (Sejm laws) of 1774-1776[33]. The Court was closely connected with the Permanent Council – it was allowed to issue lawsuits according the Council resolution. This was actually the impulse to restore the courts – at the end of August 1774, it was decided that the Council should not be involved in the judiciary. The day after, the relevant proposal to appoint the court *criminum status from sejm to sejm* was presented by Marshal Poniński and the statute was enacted in September 1774. During the discussion, an emphasis was put on the necessity to specify the range of the court cognition; it was feared about political «orders» of the Council to the deputies and senators opposed to it. It was demanded that the following be specified: the insult of the majesty crimes, betrayal and *liberae vocis et opressi civis, denegati iudicii, coruptionis et periurii* matters[34]. Other controversial issues raised during the working on the statute included, among others: doubts with regards to the participation of the whole Senate in court, as followed from the tradition, as well as the ways of electing representatives of the knighthood. The practice itself also brought problems; it has been already mentioned earlier about the delay in establishment of the court because of Marshal Lubomirski. In August 1776, the new procedure of electing representatives of the knighthood was introduced: because of the 'obvious problems in the execution' of the up-to-then form of election, 30 judges of the knighthood were chosen on provincial sessions, meaning that 10 were elected in each province, so that «each voivodeship could have at least one»[35]. The court regulations were also enacted[36]. In this period, i.e. between 1776-1786, the Sejm Court dealt only with one case, of baron Julius, which anyway should be considered as the victory of the opposition, sitting in the Permanent Council.

The issue of the Sejm Courts systems came back already in the epoch of the Great Sejm. First regulations devoted to the Sejm Courts were found in Art. 11 of the Act of the Military Commission of 15 December 1788[37]. This article regulated a possibility of bringing to responsibility the members of the said Commission. As the answer to the question why the article about the court was to be found in the act substantively concerning a different body, Zbigniew Szcząska indicated the fact of the military reform; it was one of the most significant move of the Great Sejm sessions during the first months. Because the Sejm decided about appointing the national armed force, it wanted to ensure itself with the control of the military Commission and prevent a possibility of using the army contrary to the Sejm will[38]. The judicial composition was to comprise 6 Senators, four ministers, one of the Marshals, one of the hetmans, one of the Ministers of Treasury and Finance, 24 deputies representing the provinces in equal number, elected by the joined chambers. The full judicial composition was supposed to include 24 judges led by the King, and in case of his absence – a judge elected according to the regulations. The members of the Military Commission were to be responsible before the court for violating safety of the Sejm, regional councils (Dietines), tribunals and other courts

by the Commission, inactivity of the Commission in case someone else threatens safety of the Sejm, overuse of power, illegal arrest of a nobleman, conducting offensive warfare without the Sejm consent. The impeachment procedure was to be conducted by a deputy to examine the Military Commission (Parliamentarian Control Deputation) or, in case he neglects – the crown instigators (authorities fulfilling the functions of the highest public prosecutor). In June 1789 the Sejm judges were elected and the oath was compiled[39].

Resolution of the Sejm of 19 June 1789 ordered the instigators to start the proceedings against the Minister of Treasury and Finance Adam Poniński, the former Marshal of the Sejm which had approved the First Partition of Poland. The new, announced Sejm ordinance was soon enacted, during the session on 24 August 1789[40], now directly in the context of Poniński's case. Beyond the strictly technical settlements, i.e. setting the dates and times, the ordinance also included some procedural rules (e.g. the methods of voting by the judges, responsibilities of the judge presiding *primus in Ordina* during the King's absence). The course of the case will be discussed in more detail below. At this point, the works on the Sejm Court system should be summarized, which required further revision with regards to the enactment of the Constitution of 3 May and its indication in Art. VII (the King, the executive power) that members of the Permanent Council would be accountable to the nation with own person and property for all the crimes.

The Sejm Law on the Sejm Courts was passed on 17 May 1791[41]. It was to give a concrete tool to protect the Constitution from conspiracy and betrayal; Scipione Piattoli in the letter to the King written directly after the Sejm session on 17 May labelled it as one «of the most important and the most proper to fasten the great work of the Constitution»[42]. In the Sejm, the need of a new act was in no way questioned, during the session only the amendments resulted from the necessity to coordinate the proposal with the already-passed Law on the Sejms were discussed. The proposal was reported by deputy of Volyn Walerian Stroynowski. He informed that in the final shape of the proposal, a possibility of including ministers in the Sejm was excluded, eventually, it was decided that the 36-member team replaced the original proposal of 34, the number of judges in the set of judges was to be 15 instead of the original 24 judges, finally it was also ordered to appoint one court clerk instead of two separate for the Crown and Lithuania[43]. During the discussion on presenting the proposal and its amendments, a possibility of dividing the tenure on two adjudicating sets was also considered. The part of the discussion concerning Art. 26 of the proposal constituted another interesting document of the epoch, according to which the «Sejm Court in case of doubts, in relation to both the Law and the evidence of the committed offense by the non-guilty, will be delivering decisions in favor of the accused». Gieysztor (a deputy), according to whom «in justice, the eyes should be covered, and there is no room for doubt in court»[44], met with rejoinders of deputies Kublicki and Stroynowski. The former stated that he «always prefers every court finding the ways to acquit the accused from finding ad hoc the reason to convict him, thereby being consistent with the modern Enlightened Age, in which no one should seek his

neighbor's blood»[45]. Deputy Stroynowski, in turn, indicating that «there are often such opposing claims that do not allow a judge to get a conviction», was asking: «in such cases, is it not the highest justice to act in favor of the accused instead of against him? Is it necessary for the interest of the Nation to impose a punishment of death or imprisonment against a man whose fault has not been completely proven?»[46]. Another contentious issue regarded possibilities of invoking *ius agratiandi* towards persons convicted by the Sejm Court; Kublicki demanded clarification on the exclusion of intentional homicide, it was however proposed to further discuss exclusions from the right of reprieve and include it in other regulations, because the Sejm Court will not be adjudicating on the cases for murder. It was also resigned from appointing a separate clerk for the court, his functions were entrusted with the clerks of the place, in which the Sejm was supposed to take place, i.e. Warsaw and Grodno. The act was enacted unanimously[47].

Thus, in the accepted form, the act predicted the judicial composition of 36 persons: 12 senators who could not sit in the governmental Commissions and 24 deputies who were chosen in the way described in the Law on the Sejms. The whole set of judges was to be composed of at least 15 persons; the *primus ex ordine* function, i.e. presiding was supposed to rest in hands of a deputy representing this province that was being represented by the Sejm Marshal at that time («the one guesting the Sejm` mace»). The judge, against whom the proceedings or crime assistance had started or had been engaged in a legal dispute, would be excluded (Art. II). In case of lacking a quorum in the set of judges, the court in the number of at least 12 judges could receive the missing dygnitaries, so the Crown officials and authorities of the Grand Duchy of Lithuania. In case of the exclusion of a greater number of judges, the Sejm could conduct another drawing of 36 judges, considered as supplementary adjudicators, if the need arose. After the selection and submission of the oath within 12 days, the Court was assumed established and supposed to pass the regulations, indicating the meeting days and specifying details that hadnot been regulated by law. Election of the judge responsible for running the «verdict book» (Pol. «sentencjonarz») was to be held unanimously or in secret voting. It was also predicted to use the disciplinary measure by means of the two-years *carentiae activitatis* towards a judge who would neglect his duties: omitting the judicial sessions within the prescribed period of time, «breaking the composition» or leaving the place of adjudication without its consent.

The cognition of the Sejm Court embraced two forms of public trespasses: against the nation and against the «highest government of the Republic» (Art. VII). The former comprised the misdeeds against the public peace and safety, i.e. rebellion of «common people in villages or cities» or rebellion of the army to violate the chain of command or break the orders. The leaders of such rebellions were punishable by death and eternal infamy, whereas their assistants by infamy and deprivation of liberty. This category also comprised the «misdemeanors of public harm» for which persons were liable before the courts of the Tax (Art. X), with respect to this, the liability of the Guard of Laws or the Sejm Commissions were regulated in separate regulations.

The misdeeds against the Republic comprised the violation and betrayal against the majesty, i.e. against the monarch, against the Sejm and regional councils (Dietines). The committing the murder of the King or the King's person, an armed invasion of the royal residence or an imprisonment of the King were punishable by death. The doers were punishable by death, whereas the less guilty aiders by the exile or prison. The leaders of the planned but unimplemented conspiracy were to be punished by infamy, capital punishment, exile or alternatively loss of property or dismissal. The misdeeds against the Sejm, regional councils (Dietines) or the judiciary were described in the relevant laws; the Law on the Sejm Courts itself predicted a penalization of acts against safety of the Sejm Court itself.

Art. XXIV of the Law on the Sejms[48] stipulated the following misdeeds against the Sejm: inclosing «the Sejm place by the army, police or armed groups, either to impact or to violate the will of the Sejmers,' blocking a senator or a deputy from entering the chambers, presence on the Sejm session with a firearm or reach for weapons with hostile intent, 'malicious attack.» These forms were to be punished by infamy or death. Other punishable by death activities encompassed establishment and participation in the «Sejm confederation associations» (alternative rebellious legislative bodies) and connected with them «arbitral Sejms». Personal violation «committed against a deputy» was qualified as a «misdeed of the insulted majesty» (Art. VI of the Act on the regional councils (Dietines).

The Law on the Sejms also included specific regulations on the course of selecting the Sejm judges, being supervised by the Marshals (Art. XII of the Law on the Sejms).

In the form of a resolution, the Sejm chamber deputed to public prosecutors whom to pursue in proceedings before the Sejm Court, it could also enable a right to a delator (private prosecutor) to the citizens who suffered their own injury «because of their pure eagerness for the public good» (Art. XII of the Law on Sejm Courts). It was thereby tried to protect the accused from a «malice accusation»' i.e. an unjustified claim. In such situation, a private prosecutor («delator») was threatened by *poena talionis*, so an equivalent to a penalty «that would be imposed on the accused if his fault was proven by the prosecutor» (Art. XIII).

The public prosecutor was obliged to prepare the summons and deliver it within 3 days to a person staying at the place of the courts or within 4 weeks if the person was staying out of the place. The summons, drawn up in Polish and equipped with the seals of the Crown Chancellery and the Grand Duchy of Lithuania, was to be lodged by the court official (*ministerialis*) in the presence of two noblemen in the defendant's place of residence. The delivery of the claim was recorded in the books of the surrounding court. The summons was to clearly indicate the person concerned, the misdeed and the threat of punishment as well as the legal basis and date of the hearing (Art. XII). Apart from the accusations of extraordinary revolts or conspiracies, the bail was allowed, a hypothetical pre-trial detention was considered as a security measure and it was recommended that such prisoners '«did not suffer unnecessary unpleasantness or discomfort» (Art. XIII). The defendant was entitled to the counsel on request and the court appointed «to help and defend two patrons who were honest and familiar with the law» (Art. XIV).

The proceedings were to be open and public, the freedom to publish documents concerning the case was guaranteed. The «arbiters» from the outside, i.e. the audience had a free access to the proceedings outside the inquisition phases (explanatory proceedings, hearing witnesses) and instigation (judicial session), on condition of silence and respect for the court.

Conclusions, so the voting proposals submitted to the judges, if not unanimously agreed, were to be voted two times openly, and if there was no further agreement by the majority – secretly. Resolutions of the court were to be written into the Sejm records and signed by the President and two judges. Every session and court activity were to be entered into a «well-kept» protocol (Art. XIX). Firstly, the court conducted the inquisition phase, in which all the judges or the six-selected participated. The investigation materials were read out *in pleno*, and the referendaries prepared the conclusions to be submitted to the Sejm. Before delivering a decision, the court was supposed to communicate all arrangements for the accused and allow him, a chosen defender or a patron to speak. In case of contradictions in the testimonies, the court began to confront witnesses. Before the final instigation, it listened to the summary and final conclusions prepared by the referendaries. In the sentence, the court was obliged to decide on one of the three possibilities: that the accused was innocent, that the accusations have not been proven or that the accusations «have completely not been proven.» In the first scenario, the accused was set free, his «innocence and uncontaminated honor» were announced, whereas the private prosecutor (delator) was threatened by the responsibility, if he acted in a given case. In the second scenario, the court announced both the accused and the private prosecutor (delator) as «free from court and punishment», and in the third one the court found the accused guilty and imposed punishment (Art. XXIV). Another regulation specified that only this person could be found guilty, whose act was qualified as a crime, similarly, only this punishment could be imposed that was predicted by the statute; it was also stated which proofs were to be considered as «full and unambiguously confirming the crime at stake». Doubts concerning both the law and the proofs as well as the type and severity of punishment were to be settled in favor of the accused (Art. XXVI). The verdict was to be published within 3 days; its execution was the task of the Marshals. The last article included the oath of the Sejm judges.

The detailed regulations were actually not used in the last period of activity of the independent Polish state. There could be still found the royal decision of 1791 entrusting the court with the case of the Zajączkowski marriage, who were accused of violating the Sejm[49]. In the spring of 1792 the newspaper «Gazeta Narodowa Y Obca» reported that Mrs Zajączkowska by court sentence had been «condemned for lifetime closure in the Infant Jesus' Hospital, where she would be kept at the expense of Zajączkowski freed from the detention»[50].

In the «Declaration on the present state of the Republic», authenticated on 26 May 1792, in the face of intensive political events – establishment of the Confederacy of Targowica and the outbreak of war with Russia in defense of the Constitution of 3 May – the Sejm established an Extraordinary Sejm Court. A crime was considered an authorship of the conspiracy against the Sejm and the legal power of the Repub-

lic and not-withdrawing from it within 6 weeks from the publication of the statute by means of the letter of the King to the Guardians; the last solution was directed almost directly to the Targowica traitors, i.e. hetman Franciszek Branicki, hetman Seweryn Rzewuski and general Stanisław Szczęsny Potocki, who were defined as «the enemies of the homeland»[51]. The equal severity was required by the Sejm towards the conspiracy members staying at home and abroad, those who would persuade the army of the Republic to treason or ask foreign troops for help – they were to be «removed from all civic prerogatives, dragged through mire and punished to death». On 31 May 1792, the Sejm enacted the more detailed rules on the Extraordinary Sejm Court, thereby simplifying, among others, the judicial composition to 5 persons – two from the Senat, three from the knighthood and the adjudicating group to 3 persons[52]. The Sejm Court in a reformed form was abolished by the Sejm in Grodno in 1793, when the provisions of the Constitution of 1588 were actually restored[53].

2.3. *The trial of Adam Poniński*

Undoubtedly, the most famous criminal case decided by the Sejm Court of the Great Sejm epoch was holding liable Adam Poniński (of «Łodzia» family crest), the Great Crown Minister of Treasury and Finance, who during the period of the Partition Sejm 1773-1775 assumed the function of the Marshal of the confederacy and the Sejm, thereby giving his services to Russia. It was a process that took place from 24 August 1789 to 1 September 1790 before the Sejm Court, only partially reformed by the abovementioned article of the Law on the Military Commission. It aroused enormous public interest. Although on the one hand, the engagement of the Parliament members could delay the reform works, the educational and legal aspects should be also emphasized – «unmasking and condemning a high official (dignitary) considered as the main culprit of treason and a tool in the hands of foreign powers» and an acceleration of the development of «completely developed constitutional responsibility»[54].

The direct reason of the prosecution against Poniński was the matter of a debenture requiring the State Treasury to pay to the Sovereign Military Order of Malta 5000 zlotys. The abovementioned document as well as the financial commitment were mentioned in the Sejm Act of 1775 written on the session of the 114th Sejm on 5 June 1789[55] – by the then Sejm Marshal Poniński, without the knowledge of Parliament members. Wojciech Suchodolski, a deputy from Chełm, demanded a court order against Poniński, accusing him of treason and corruption. Zaleski, a Troki deputy, prepared a draft proposal on the relevant resolution, supplemented with the recommendation of preventive detention[56] that was adopted on 19 June 1789, after the amendment. According to the resolution[57], the claim was to concern the accusations of a «secret and hasty proclaiming himself to be the Marshal of the Sejm and of the Crown Confederation, even though not being entitled to», «receiving the wages from outer powers and foreign interests, thereby jeopardizing the Republic wellness» and advocating the statutes in exchange for financial benefits during the Sejm session 1773-1775. The resolution recommended to prepare

the internal regulations of the court (ordinance) in the scope of the definitions and detailed procedural regulations. On 12 June, Wojciech Turski assumed the post of a delator. On the same day, the judges were chosen, including Franciszek Ksawery Branicki, who was paradoxally also deeply engaged in the events of the Partition Sejm. The accused Poniński referred to this fact as the main obstacle in the proceedings, demanding exclusion of Branicki[58]. The court refused the application, because the Sejm resolution ordered to decide the Poniński's case «only in personal charges»»[59].

With regards to the incoherence of the legal basis (after the abolition of the Permanent Council), it was established that by the time of the new regulation on the Sejm Courts, the ordinance of 1776 would apply as long as it would not be contrary to Art. 11 of the Act on the Military Commission, supplemented with a new resolution that strictly prohibited from accepting wages from foreign governments.

The story of Adam Poniński's life and its trial was indeed a cinematic course, as the detainee managed to escape in the summer of 1789; thanks to the cooperation of his older son, he left Warsaw and went to Prussia on the Vistula. However, he extended his stay in Toruń hastily and was finally captured[60].

The court started the new proceedings on 24 August. The first three sessions were presided by the King himself, who was later replaced by castellan Żelecki. The claim repeated the charges that had been earlier expressed in the Sejm resolution, supplementing it with offering services to neighboring powers against the own country as well as in 1773 leading to eternal banishment of Tadeusz Rejtan, a patriotic deputy who had been protesting against the partition. On his own request, Poniński was given 4 patrons, the *ex officio* defenders. He also invoked the counterclaim against Wojciech Turski, the delator for the «defamatory accusation».

Poniński spoke on 29 August[61], accusing the court among others of preventing the «communication» and thereby inability to prepare a decent defense. The Sejm was waiting for many weeks for completing the documents of the accused. In December, Poniński brother, Kalikst, brought a claim against 60 politicians, the participants of the Partition Sejm, who were considered by him to be complicit with accusations against his brother. The court refused to accept the charges, forwarding the case to the decision of the Sejm and ordering to continue the main proceedings. On 14 December, the claim of Kalikst Poniński was being discussed for a few hours. However, no decision was made either on this day, or in the other. The court decision was thus upheld.

The substantive proceedings started on 9 December, when the delator (private prosecutor) delivered an oral accusation. On 19 December and later in consecutive dates in the spring, the defense announced the so-called rejoinder. On 27 March 1790, the 12 judges were elected to hear witnesses, which was conducted on 12 July. At the end of March, Poniński was released on his brother bail. With regards to the delaying activities, the Sejm resolution of 10 August[62] obliged to omit hearing of these witnesses of the accusation who would not appear within two weeks and after other two weeks, the process was to be finished.

The prosecutor made a speech summarizing the process on 25 August and on 28 August the accused spoke out. The verdict was announced on 1 September 1790. The

court found Adam Poniński guilty. It was considered to be clearly proven, that the accused had appropriated the Sejm Marshality, had led to the punishment of deputy Rejtan, had been greedily taking remuneration from abroad, had been receiving money for enacting the laws, had been falsifying the publication of statutes after the finished Sejms and had been shamefully breaking the law. Although Poniński was not punished to death (according to the court record, only one vote was missing for this decision), he was deprived of honor, nobility, titles and names of the Poniński princes. All medals, public functions and property were taken away from him and he himself was sentenced to eternal exile. Furthermore, the Rejtan's sentence of 1773 was annulled[63].

Poniński (already as «Adam», with no right to the family name) treated the verdict disrespectfully. Eventually, he left for Jassy. The Confederacy of Targowica of 1792 restored his nobility and title. However, in 1798 he died in poverty in Warsaw[64].

In the journalism, the verdict was presented as compensation for national treason, even though the public opinion was disappointed that Poniński had not been punished to death. With regards to the procedural activities, the King and Ignacy Potocki brought closer, which opened a possibility of cooperation in scope of the systemic law-making[65]. Potocki, having been appointed as the Great Crown Marshal, became very involved in the works on the draft law on the cities that would be eventually considered as a part of the Governmental Statute, i.e. the Constitution of the 3 May. He was also participating in a conspiracy to prepare the text of the Constitution itself[66].

3. *Regulations on legal responsibility in the Constitution of 3 May – the letter of law and the understanding of legal institutions*

3.1. *Inviolability and protection of the Constitution*

Despite the controversies on how the people of that time understood and applied the principle of superiority of the Constitution by enacting the Governmental Statute in 1791[67], the emphasis on the function and meaning of the constitutional act attracts attention. Directly in the preamble, the following phrase was written in: «[…] for securing our liberty, and maintaining our Fatherland and our possessions; with spiritual zeal and firmness, we do solemnly establish the present Constitution, which we declare wholly inviolable in every part, till such period as shall be prescribed by law, when the nation, if it should think fit, and deem it necessary, may alter by its express will such articles therein as shall be found inadequate».

A special supplement of the sole text of the Governmental Statute was the *Declaration of the Assembled States*[68], enacted as an integral part of the constitution, either directly with its main text of 3 May or with the one of 5 May, when the Constitution was adopted[69].

Basing on the *Declaration*, its authors abolished all «old and present» laws being contrary to the Constitution and declared the systemic statutes specifying the «responsibilities and system of government» as the component part of the constitution. The executive power was to immediately undertake its responsibilities under the eye of the Sejm. The Assembled States swore «to defend by all human forces of

this whole constitution, and to give the oath to confirm the honest love to the fatherland» and ordered all public authorities and armed forces to do the same. From this moment on, the date of 8 May, the Day of St. Stanisław, bishop and martyr (and at the same time the name's day of King Stanisław August) was to be celebrated as a festive day and thanks for «the eventful moment of the successful extraction of Poland from the foreign violence and domestic disorder, for the restoration of the government that can successfully secure our true freedom and all of Poland».

The last paragraph of the *Declaration* expressed a special will to secure it («we keep an eye on protecting this constitution [...]»). The threat of abolition of the constitutional system was real from the first moment of its existence – in any case, it was connected with the internal (conservative opponents considered it as an attempt against the noble freedom, moreover, they considered the work of 3 May as the act enacted through a revolt, with a violation of the norms) and external threats (Russian reaction and a military threat from this state). According to the *Declaration*, «whoever dares to act against this constitution, or undermines its legitimacy, violates the peace and happiness of the nation through the spread of distrust and intentional misinterpretation, and all the more by inciting rebellion or any form of its support; he will be considered as an enemy, a traitor and a homeland rebel and will be immediately punished by the court with the most severe penalties». Finally, it was ordered in the Declaration to constitute the Sejm Court and to hypothetically judge everyone who would be reported to be raising or taking part in a rebellion. The prosecution could be started by a settled resident, in assistance of instigators. The executive power, in consultation with the court and through the army, was responsible for the implementation of the executive activities that accompanied the proceedings.

These special stipulations of inviolability of the Constitution are particularly understandable if we realize that one of the main arguments against the Constitution was an allegation that its authors had broken the *pacta conventa*, an agreement between the King and the nation and its fundamental rights, for example by introducing a factual heredity of the throne.

In this period, the main political opponents of the constitution, Seweryn Rzewuski and Stanisław Szczęsny Potocki were already staying out of Warsaw. Since April 1791, Rzewuski had been living in Vienna and he got learned about the content of the constitutional statutes and the course of May events mainly from rumors and postal reports. Potocki joined him, running a similar correspondence[70]. In the first months after enacting the constitution, the Vienna court was in favor of Polish politics, or at least it came to terms with the events in the face of much more entertaining events in France. However, soon after, an unexpected change on the throne that will be taken by unexperienced and young Cesar Franz will open the field to offensive Russian activities.

Szczęsny Potocki joined Rzewuski in Vienna, and in September, they both went to Jassy, the headquarters of Prince Grigorij Potemkin. After some time, hetman Branicki joined them, who had actually obtained a royal consent to the leave. He explained the reasons of his travel as a necessity to ensure the inheritance proceedings

after Potemkin who had died in October 1791, a relative of his wife, and her consolation[71]. At first, the King had refused[72]. Eventually, he had agreed on the leave, asking Branicki for the word of honor that he would not sign any documents opposite to the Governmental Statute, not conspire with Rzewuski and Potocki and not rebel anyone in private conversations. Branicki was supposed to come back after a month but this term was extended[73]. The future conspirators met in Jassy on 19 November, the letters between them and Catherine the Great were already circulating, encouraging to undertake anti-constitutional activities.

At the same time in Warsaw, after a fierce discussion, the Sejm enacted a regulation of 24 October calling Rzewuski and Potocki, still receiving the state wages (one as a field hetman, the other was a horse artillery general) to come back to their responsibilities and taking an oath on the constitution. The King «in the Guard of Laws» wrote a formal letter to Rzewuski, whereas the Military Commission undertook the same action towards Potocki. Only after another calling in December 1791, did Potocki answer in a pompous tone, refusing to take the oath, «being free as the nation's representative to protest»[74]. Rzewuski wrote an arrogant letter to the King only at the beginning of January, already including open threats: «I said [...] that the establishment of succession and monarchy in Poland may lead to the division of Poland. No neighbor does accept hereditary of the throne and monarchy in conjunction. If that would happen, he prefers a division rather than monarchy»[75]. The King undertook another negotiation attempt, sending to Jassy a cousin of Potocki – Stanisław Kostka Potocki (brother of Ignacy), nevertheless it did not bring an expecting result; the King only received another arrogant and lying letter.

On 27 January 1792, the Sejm considered the case another time, after the expiry of the 3-month period given to the rebels. Many deputies were absent, thereby avoiding a necessity to take a stand. Despite the voices in favor of the absent ministers including the primate[76], after reading out their letters and a fierce discussion lasting almost until midnight and a dual voting, the proposal of Julian Niemcewicz was accepted that took away the hetman mace from Rzewuski and removed Potocki from his post. Although Stanisław Sołtyk introduced his counter-project to postpone the case until 1 March that actually won in the voting 59 to 37, the secret voting was demanded in which the result was 51 to 43 in favor of Niemcewicz's proposal[77]. The two institutions of hetmans were abolished, the Military Commission was ordered to fill the post of general artillery after Potocki as well as others, if the officers who were appointed to them did not take the oath on the constitution.

Augustyn Deboli, a deputy of the Republic of Poland in Petersburg was later writing from there that when the two traitors got acknowledged about the Sejm statute, «they were happy with achieving the political aims [...] which was mocked by the clear-headed Moscals (Russians) who said that everywhere else people would be happy with gaining the posts, whereas the Poles are satisfied with their losses»[78].

Branicki, who even though had come back to Warsaw earlier, was again granted a leave to the property matters arrangement. What was worse, as the hetman, at the King's command, he was to prepare the Polish defense plan in case of Russian aggression.

He asked for a military documentation that was prepared for him by the Commission, and on 14 March 1792, he went straight to Petersburg together with the secret documents. At the end of April, the conspirators write *The Act of the general free crown confederacy*, so the Targowica rebel (in fact, the *Act* was created in Petersburg, not in Targowica), in May, the Russian troops will enter Poland and the war will break out in defense of the constitution.

In the context of the analysis, the attention is drawn by the Sejm discussion of 24 October 1791 over the fate of Potocki and Rzewuski and over the expiry of the 3-month period that was given to dignitaries for return to Poland, of 27 January 1792. For the first time, the issues of loyalty to the Constitution and an open violation of its provisions were put on the forum, including a specified by another statute obligation of swearing in the Constitution by high officials also staying outside of Warsaw. Apart from the political system (the magnates were still enjoying support of a certain group of deputies, which was outraged by deputy Linowski during the January debate – «If there are only the captains and lieutenants to be punished, and we release the hetmans and generals with impunity, where is the rank of this government, which should not consider the people but the offices? – […] A paid hetman, a paid general in the eyes of the law is nothing but a servant»[79]), this discussion also gives an insight into strictly legal issues: there is still no convincing evidence of the conspirators' activities, there are their letters and journalistic works. The dispute in Parliament also focuses on a question about the freedom of speech limits, whether an open criticism of systemic changes, expressed so far only by word, can be penalized? «I see no rebel, I do not explore a rebellion, I am not convinced by one piece of treason, the opinion about them seems to take place of all crimes […]» – Prince Czetwertyński defends the accused and claims that «Rzewuski considers the Constitution to be bad, so he cannot swear on it […]»[80].

The King, even though he called to put an emphasis on the role of the executive power and an obligation to protect the constitution, requested that the writing to potential rebels not be too harsh, to express «the character and virtue of the Sejm.' Deputy Kiciński strongly polemicized, noting that the behavior of ministers is 'an example of demoralizing disobedience of the supreme power», «threatening with a plague». «The spoiled children do not even respect their mother. They deny her authority and her power over them». He warned that the attitude of deputies would not be affected by the fact that the decision concerns great masters, magnates, because the Governmental Statute had secured «the perfect equality of the nobility». Deputy Wawrzecki said that although he came to the session with an intention to defend «the two upright but more than enough overconfident citizens», the letters from the conspirators angered him. Nevertheless, he called for the patience to give a chance to the accused «to be converted to love to the fatherland» and «to recognize the primacy of the Constitution as a guarantor of freedom without which there would be no freedom in the world»[81].

The issue of the freedom of speech in the context of the Constitution had already appeared on the Sejm forum earlier, during the preparation to the Dietines planned on February 1792, during which the nobility

was to express its attitude toward the constitution. It was discussed on the session of 6 February whether the ban on spontaneous gatherings, the so-called *conventiculum* binding during the Sejm confederation, can be violated, even if the nobility gathers to express the praise to the constitution. On the other hand, it was feared that the nobles' gatherings could become an occasion to anti-constitutional propaganda activities of Rzewuski and Potocki. Deputy Dobrzyński put a proposal of the Declaration that would forbid «the manifests and protests» against the public acts and the Governmental Statute, perceiving the authors and considering such protests a «destroying public order» and ordering to bring them before the Sejm Court. The offices were prohibited from accepting such acts. Nevertheless, «the free speech on civic sessions and free explanation of own way of thinking, always and everywhere» was solemnly assured to every citizen.

At first, the proposal received no support. Deputy Niemcewicz was in favor of it; according to him, the proposal did not violate civic rights but it rather assured public order. A similar position was taken by deputy Zieliński, who was pressing to «follow the strict execution of the law» in the case of the absent magnates and he considered one who goes to a foreign «power» and uses «its power against own fatherland» as «a traitor and rebel». Marshal Potocki who was «not afraid» that «the manifests harmed the Sejm or weakened the Constitution» suggested to supplement the proposal with a claim that every opinion expressed in the Sejm could be given to the public acts. Deputy Rzewuski, a cousin of Seweryn, one of the rebels and a brother-in-law of the other, was definitely in favor of the proposal, claiming that none of the misdeeds against the Constitution can be harmful, whereas he, having sworn on the constitution, will be keeping it «with strength and life». Deputy Wawrzecki considered the proposal limiting the right to protest as «a prudent warning of citizens not to be deluded»; according to him «everyone who is not in favor of the constitution, should believe that its destruction cannot happen without a general destruction of the state». He also called Szczęsny Potocki, even though being not convinced to the Constitution of 3 May, to take an example of Franklin who «although not content with the American Constitution, sent a wonderful and virtuous statement to the States». Deputy Skurkowski replied that the proposal violates the old law of '*nomini acta publica deneganda*' and by making the open activities impossible, it will lead to a «secret revolution». There was a voting after the King's call, the Declaration was passed by 125 votes to 24 in a secret ballot[82].

The course of these discussions allows to put forward a thesis that although the nobility was very concerned about own political privileges, in the face of a real threat from Russia, it considered the protection of the Constitution and inviolability of its provisions as an absolute priority.

3.2. *Responsibility of the executive power*

With regards to the correlations between the legislative and the executive, the regulations of the Constitution of 3 May were of modern and precursory character. They established the limited and responsible government. Art. VI was devoted to the legisla-

tive power that was constituted by the Sejm (the Assembled States), comprising two chambers – the House of Deputies, called «the representative and central point of Supreme national authority» and the Senate, consisting of Bishops, Palatines, Castellans and Ministers.

Art. VII (The King or executive power) included direct regulations in the scope of the systemic position and accountability of the executive. The constitutional-maker clearly indicated that the free Nation, having secured «the right of enacting laws» and «the supreme inspection over the executive power», entrusted the power of executing the laws to the King and «his Council», the latter to be called as the Council of Guardians. The Council was to «watch over the laws, and to see them strictly executed according to their import, even by means of public force, should it be necessary». It was forbidden to «assume the right of making laws, or of their interpretations [...] to contract public debts; to alter the repartition of the national income, as fixed by the Diet; to declare war, to conclude definitely any treaty or any diplomatic act; it is only allowed to carry on negotiations with foreign Courts, and facilitate temporary occurrences, always with reference to the Diet».

With regards to the monarch, the regulations at stake took a classic form releasing the head of state from any type of responsibility. According to the said article, «[t]he King's person is sacred and inviolable; as no act proceed immediately from him, he cannot be in any manner responsible to the nation; he is not an absolute monarch, but the father and the head of the people». At the same time, the change of the electoral system to the elective dynasty, so in other words, the establishment of the «hereditary executor», was one of the most controversial decisions of the basic law[83].

The Council was to be composed of the Primate, the Minister of Police, Minister of Justice, Minister of War, Minister of Finances, Minister of Foreign Affairs, two non-voting Secretaries and the heir to the throne, also without a decisive vote. The Marshal of the Sejm also had a right to sit in the Council, without taking any share in its resolves' but in case of emergency, deciding to convene the Sejm if, despite «a thorough request», the King would refuse to do so.

The resolutions were to be discussed by everyone and the King's opinion was to prevail. At the same time, every resolution, issued on behalf of the King, was not only to be signed by him, but also countersigned by one of the ministers sitting therein. In case a minister refused to countersign, the King was obliged to forego his opinion, but if he persisted in it, the Marshal of the Sejm was supposed to convene the Sejm. This procedure raised doubts in the public debate; it was feared that the King would exert influence on the ministers, while they would be responsible for the person and property before the Sejm Court. Tadeusz Czacki, asked: «Could the King not find one out of sixteen ministers, who will blindly complete his will, and consequently sign the King's resolution? Does it take a long time to overthrow the fragile statue of liberty?»[84]. An anonymous author of another letter directly stated that the existing regulations were leading "to a monarchic throne"[85].

These accusations were commented by Ignacy Potocki. «How will the minister oppose the King?» – he asked. «First of all, a Polish minister will resist for the right of his own responsibility, he will shield his life and property, which are higher than all

royal promises and gifts. Second of all, the Polish minister will trust the Sejm. Third of all, the nation will resist for own and general power, just as every nation does in the case of an ultimate violence of own rights and freedoms»[86].

Not only this issue, but the strengthening of the King's position in general gave rise to fears expressed in the public debate. Tomasz Dłuski, who in a great exaggeration contrasted the situation in Poland with England, wrote as follows: «[…] everything makes the opposite in our place. We have nothing sacred in our laws. Everything can be cancelled on every Sejm. The present King looks at the Sejm, so does the Sejm at the King, because the King is the founder of the Senate and all ministers, the founder of all royal, provincial, landowning and district offices, the founder of the army ranks […] We all keep an eye on the King's overly-distributive hands»[87].

As indicated, the appointment of ministers was a royal prerogative. It was the King who «called» them to be in the Council for a two-year term of office. At the same time, the short post-May practice proved that the King had to reckon with the political moods. In a letter to Deboli, the King wrote the following: «I can see a strong political support for Kołłątaj that – once articulated in the Sejm voting – can possibly result in his appointment for a post of the Keeper of the Seals; however, I am very aware of the fact that it would be an overly ambitious, stubborn and demanding minister. But his efficiency would be verified after the first two years of his term of office»[88]. On the other hand, there were many protests recorded with respect to the appointment of Hugon Kołłątaj, and the other side of the political scene was complaining that, in spite of the controversy, the King upheld this decision. «Therefore, despite the criticism of many citizens, was he [Kołłątaj] not designated for this post?» Dyzma Bończa Tomaszewski asked acrimoniously, accusing the monarch that «having so much power in his hand, he dared defend, ignore, excuse and in the end release him from punishment and responsibility»[89].

The members of the Council were not allowed to be in any Commission (Education, Police, Military and Tax). These organs were composed of ministers and the chosen commissars – the Sejm representatives, they were acting as the executive organs, obliged to obey the Council.

The systemic solutions of the Constitution of 3 May predicted a double responsibility of the Council members – on the one hand political, associated with the loss of confidence in Parliament, and on the other hand – criminal. The relevant regulations of the Constitution and the Law on the Sejms will be analyzed in this order.

In the joined chambers, the Sejm could demand a change of a minister in the office or in the Council in a secret voting with a two-third majority of votes. The King was obliged to immediately appoint another minister in place of the dismissed one.

The procedure was detailly regulated in Art. XIV, 18vo of the Law on the Sejms. Before separating the chambers, the secretaries were to hand out to all deputies and senators the catalogue of all ministers, sitting in the Council and in the governmental Commissions, to vote whether any of them should be dismissed. There was supposed to be an empty vase placed on a table. After showing that it was empty, it was to be closed with the keys, one of which to be entrusted to the Marshal, the other to

the Sejm Marshal, and the third one to the King. Every deputy and senator who was called forth had to circle a name of the minister whose replacement he wished to occur «because of distrust» and to put the folded form into the vase. For the inspection after the voting, the King appointed a senator, whereas the Sejm Marshal – two deputies from each province. The inspection had to finish during the same session. If a deputy received two-thirds of the votes, he had to be «excluded from the office». Formally, this 'exclusion' could not harm his «fame and civic rights» but it resulted in an inability to obtain a second appointment for the next six years. The Marshals were supposed to conduct the mentioned procedure in a specific time, not being admonished by the deputies. On the vacant posts, the King was to nominate «the noble native descendants, the Catholics». Even a trustworthy minister could not resign from office earlier than during the ordinary Sejm, after the above-presented voting and the announcement of its results.

These solutions got also some voices of criticism. One of the opponents wrote: «At the beginning, a law-breaking minister can be dismissed by the two-thirds of secret votes. However, I am asking whether this would be a prize for those harmed by him or whether this would guarantee the nation's safety if a bad person who was sinning for two years, breaking the law, violating the freedoms and liberties, would be dismissed and possibly replaced by a worse individual appointed by the King»[90]. Others in turn, like Tomasz Dłuski, considered it as a weakening of the ministerial positions in the King's favor: «taking into consideration the power of the King given by the revolutionary Statute, the vase that was supposed to be displayed on every Sejm could become a political grave for even the best minister, without any decree, complaint, excuse and judgement»[91]. Ignacy Potocki polemicized with these concerns, pointing out that this 'vase' resulted from citizens` mistrust, that «the responsibility of ministers is only a delusion directed towards the nation that during the Sejm no one either dares or is able to grass, complain and judge a minister. The disappointment of the deputies towards this means derived from the fact that it could pose a threat towards the ministers without any accusation, complaint and judgement»[92].

Dłuski's concerns seem to be a bit exaggerated, given the fact that the Council, by virtue of the Constitution of 3 May, became obliged to «bring the close response to the Nation for its crimes». The supervisory function of the parliamentary deputations was a tool of this responsibility. If a deputation that was assigned to control activities of the Council noticed the violations, the Assembled States, by a simple majority of the joined chambers, were to bring the case before the Sejm Court «for a just and equalizing the crime punishment, or in case of a proven innocence, for releasing from the case and sentence».

The procedure of bringing the ministers, members of the Council of Guardians to criminal liability, was specified by Art. XIV of the Law on the Sejms. The joined chambers of Parliament were hearing the reports of the deputies controlling the Council and the governmental Commissions. The reports were supposed to indicate whether the deputation noticed the «reprehensible acts» and whether the citizens brought any accusations with regards to the organ. In cases of «violating the law, losing the state

treasure and public funds by the Guardians or any other governmental Commission, effecting in the loss of the state and public safety», the deputation was supposed to put a motion to the chambers to send the case back to the Sejm Courts. The chambers finished their controlling activity by hearing these accusations that were supposed to be directed to the Sejm Court and made a decision by a majority voting whether «the Sejm Court was to be involved in the NN accusation? Or not?», firstly voting on the cases of the Council members (Art. XIV of the Law on the Sejms, 17mo). The proceedings directly before the Sejm Court have been already described above.

This responsibility for the person and property was praised by Ignacy Potocki, who in the already-mentioned letter, opposing the famous thesis of Tomasz Dłuski, qualified it as «constitutional»[93]. He pointed out that this was not a responsibility for «the King's inappropriateness», but for a minister's own behavior. Whereas Dłuski criticized the sole fact of transferring responsibility to a countersigning minister, then the more common fear was the fact that as a result of the impaired Parliament, this criminal responsibility of ministers could not be conducted effectively.

The Constitution did not experience a longer practice, it should be taken into account that some of the key political acts were adopted after 3 May. Looking at the relevant sources, it can be noted that the King was very confident about his prerogatives of ministerial nominations, e.g. he postponed the personnel decisions, which outraged some deputies; similarly, it took some time to establish the Council, which was used by the King to make some individual diplomatic activities[94]. At the same time, the relatively precise formulations of the Constitution that concerned the executive power were considered as an advantage; an anonymous author wrote «[t]here is nothing better to secure the freedom than a harsh report on ministers that is guaranteed not only in the law of the third but also in the one of the sixteenth of May [the second sessions during which the Law on the Sejms was being passed], when it was made even harsher to this extend that the King, even if badly wanted, will never be able to violate the freedom»[95].

It was realized in the public discussions that for a moderate system to arise, the power needed to be analyzed, regulated, «to empower one element on the scale to make it capable to counteract the other»[96]. Unfortunately, the short period of constitutional practice did not allow to find out whether the May system met these conditions or whether it rather confirmed the critics' concerns.

3.3. *The judiciary in the Constitution of 3 May*

Art. V established the principle of the separation of powers in the following wording: to maintain the preservation and integrity of the State, the civil liberty and the good order of society, the «three distinct powers shall compose the government of the Polish nation, according to the present constitution; viz. legislative power in the Assembled States; executive power in the King and the Council of Guardians; judicial power in the Jurisdictions existing, or to be established». Art. VI, Art. VII and Art. VIII referred respectively to the executive, the

legislative and the judiciary. The latter one was more modest than two others. It stipulated that the judicial power could be exercised neither by the legislative nor by the King, but only by the established and elected organs (tribunals and magistrates). «It ought to have local existence, that every citizen should know where to seek justice, and every transgressor can discern the hand of national government».

Further regulations of the Constitution were connected with the extension of the existing structure of the state judiciary[97], that consisted of the judicial privileges of the Commission or the Sejm Court. It was this issue that was earlier critically commented by Hugo Kołłątaj: «the liking for the law and the power of the judiciary encompassed every social class. There is no other Nation that would contain so many judicial magistrates as the Polish one. We have the following adjudicators: the Sejm, King, Permanent Council, Ministers, Commissions, Tribunals, Lands, Districts, main and tiniest cities; it is difficult to imagine any part of our Government having no judicial power»[98].

In the epoch of the Great Sejm, the legislator-makers were aware of a necessity of a large-scale reform. The sole May Constitution declared the forming of «a civil and criminal code of laws», and on 28 June 1791 special Sejm deputations for the Crown and The Polish-Lithuanian Commonwealth. In this context, Kołłątaj was speaking about a necessity of «the extraordinary change of the current state of affairs». It was impossible to remain only with the reform of political and economic statutes. It was necessary to pass 'moral' statutes to solidify «the character of Poles that is not sedate enough, imitating and eager to change». This character was to be toughened – by providing the nation with the civil and criminal code of laws, «so that the former could closely guard the justice among the citizens, and the latter could prevent the crimes»[99]. According to the will of the deputies, the new collection of laws was to be named *The Code of Stanisław August*[100].

The Crown Deputation was active until 17 March 1792, however, the months of work[101] brought the real fruits in the form of only two laws: on the landowners' courts and on the tribunal courts. There were many reasons of this insufficiency, despite the engagement of the commission, including legal particularism of both sides of the Kingdom: of the Crown and Lithuania. However, the introduced amendments aimed at strengthening the judiciary in the political system; Wacław Uruszczak pointed out «providing the courts with greater independence, autonomy and professionalism»[102]. To give an example, the law on the landowners' courts (established in place of the extensive structure of the land, district and chamberlain's courts) of 10 January 1792[103] prohibited to combine in one judicial composition of the persons who were related to each other or linked by marriage. The principle of *incompatibilitas* was expressed in the incompatibility of the judicial function with the function of a deputy or a deputy of the tribunal. The law on the Crown tribunal court of 21 January 1792 established two tribunal courts, in Lublin and Piotrków, as the courts of the highest instance to, respectively, Greater Poland (Wielkopolska Province) and Lesser Poland (Małopolska Province); there was also a separate Tribunal in The Polish-Lithuanian Commonwealth. The municipal judiciary was also organized by means of the law on

internal organization of the free cities of the Republic of Poland[104] (the municipal magistrates' courts, the departmental courts as the courts of appeal and the assessors court as the court of highest instance). The above-described Sejm Court remained a criminal court for the cases of crimes against the state, the nation and the Republic of Poland.

All the courts were running the cases explicitly in Polish (before the Great Sejm times, Latin language had dominated, supplemented with Polish or Ruthenian in the Eastern voivodeships).

The administrative control over the judiciary was run by the Council of Guardians. The Keeper of the Seals was to inform the courts about the laws and the Sejm recommendations regarding the judiciary, to receive «the reports from the judicial magistrates», in which it was supposed to indicate the «case registry» including the data about the presence of the judges and the judicial composition. In cases of violation of the law regarding the composition of the court, the keeper was obliged to forward this information to the King and to send the warnings and admonishments made by the King's decision in the Council of Guardians to the courts (Art. III 5to of the Law on the Council of Guardians). The control function was described rather modestly.

Although the new statutes simplified the very complicated model, it is difficult to assume that they made it possible to heal the chronic and expensive proceedings. Another problematic issue, remaining beyond these considerations, was an insufficient implementation of the verdicts.

Conclusion

In the opinion of the author, there is no doubts that the issues of responsibility of the authorities belonged to the key systemic problems in the epoch of the Great Sejm. On the one hand, it was influenced by the centuries-old practice, whose creation was the responsibility of both the ruler (including the right to terminate obedience to him in the form of fratricidal confederations, rebellions) and the members of the legislative power in the form of a specific relation between the deputies of the Sejm and their electors during the Dietines (establishing the institution, responsibility for violating the instructions, reporting obligation on the so-called relational Dietines). The whole system of responsibility, a peculiar Polish model of stopping the authorities, was built very exquisitely by combining a distant tradition with new elements transferred from abroad. It created extensive procedures, entrusting, however, trust among the authorities. It was an experiment that departed from a dominant role of Parliament to create the stronger, more efficient and clearly defined executive. The 'moderate' shaping of such power required new concepts, such as political responsibility. However, as directly admitted by quoted Potocki, it was subsidiary in nature, if the criminal responsibility mechanisms failed and if the deputies refused to stand against the dignitaries with an open knight visor.

The Parliament lost a part of its powers, which in the eyes of the critics constituted a real threat to freedom. Nevertheless, it remained the key controlling authority and a factual tool punishing the ministers in the proceedings related to the constitutional liability.

[1] U. Müssig (edited by), *Reconsidering Constitutional Formation. I. National Sovereignty. A Comparative Analysis of the Juridification by Constitution*, Springer (Studies in the History of Law and Justice, 6), 2016.

[2] U. Müssig (edited by), *Reconsidering Constitutional Formation. II. Decisive Constitutional Normativity. From Old Liberties to New Precedence*, Springer (Studies in the History of Law and Justice, 12), 2018.

[3] First and foremost: A. Tarnowska, *The Sovereignty Issue in the Public Discussion in the Era of the Polish 3rd May Constitution (1788-1792)*, in U. Müssig (edited by), *Reconsidering Constitutional Formation I. National Sovereignty. A Comparative Analysis of the Juridification by Constitution*, Springer (Studies in the History of Law and Justice, 6), 2016., pp. 215-264.

[4] W. Uruszczak, *Zasady ustrojowe I Rzeczypospolitej a Trybunał Koronny*, in A. Jankiewicz (scientific redaction), *Lex est Rex in Polonia et in Lithuania. Tradycje prawno-ustrojowe Rzeczypospolitej – doświadczenie i dziedzictwo*, Warszawa, Biuro Trybunału Konstytucyjnego, 2008, p. 13.

[5] Established by the law (constitution) of Warsaw Sejm of 3 March 1578, Volumina Constitutionum, Vol. II, 1 (1550-1585), S. Grodziski, I. Dwornicka, W. Uruszczak (edited by), Warszawa, Wydawnictwo Sejmowe, 2005, pp. 406-412.

[6] Uruszczak, *Zasady ustrojowe* cit., p. 18.

[7] Ivi, p. 19.

[8] W. Uruszczak, *Zasady ustroju społecznego Rzeczypospolitej Obojga narodów a Trybunał Koronny*, in A. Dębiński, W. Bednaruk, M. Lipska (edited by), *Trybunał koronny w kulturze prawnej Rzeczypospolitej szlacheckiej*, Lublin, Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, 2008, pp. 20-21.

[9] Polish in extenso: «Tam nie ma równości, wolności, ani własności; tam prawa człowieka już wzruszone, gdzie ieden obywatel ma władzę wyznaczania sędziów dla współ-obywateli swoich. Tam prawa człowieka są w ustawicznym niebezpieczeństwie, gdzie iedna magistratura dla całego kraiu sędziów obiera». [S. Staszic], *Przestrogi dla Polski z teraźnieyszych politycznych Europy związków z praw natury wypadające przez Pisarza „Uwag nad życiem Jana Zamoyskiego", Dnia 4 Stycznia 1790*, p. 16.

[10] *Instrukcja województwa kujawskiego*, 1729.

[11] Jerzy Michalski quoted it, cfr. J. Michalski, *Studia nad reformą sądownictwa i prawa sądowego w XVIII w.*, I, Wrocław - Warszawa, Zakład Narodowy im. Ossolińskich, 1958, pp. 58-59.

[12] J.S. Jabłonowski, *Skrupuł bez skrupułu w Polszcze*, Lwów 1730, pp. 62-65.

[13] R. Łaszewski, *Sejm polski w latach 1764-1793. Studium historyczno-prawne*. Warszawa, Poznań, Państwowe Wydawnictwo Naukowe, 1973, p. 18.

[14] Łaszewski, *Sejm* cit., s. 19.

[15] Individual proposals, variously defining the Council's competences and accountability have been discussed by Zbigniew Szcząska. Z. Szcząska, *Odpowiedzialność rządu w Polsce w latach 1775-1792*, in «Czasopismo Prawno-Historyczne», XXII, n. 1, 1975, pp. 56-62.

[16] *Ustanowienie Rady Nieustaiącey*, in Volumina Legum, Vol. VIII, p. 73, column 99.

[17] Szcząska, *Odpowiedzialność rządu* cit., p. 64.

[18] Volumina Legum, Vol. VIII, pp. 73-75, columns 101-104.

[19] Szcząska, *Odpowiedzialność rządu…* cit., p. 66.

[20] Ivi, p. 67.

[21] For example: *List do Ziemianina pisany przed sejmem*, 1776.

[22] Szcząska, *Odpowiedzialność rządu* cit., pp. 71-78.

[23] K. Bucholz-Srogosz, *Polityczne aspekty sejmowej kontroli Rady Nieustającej – wybrane zagadnienia*, in «*Przegląd Nauk Historycznych*» n. 2, XI, 2012, p. 83.

[24] Łaszewski, *Sejm polski* cit., p. 22.

[25] *Zasady do poprawy formy rządu*, in Volumina Legum, Vol. IX, CXVIII, p. 157.

[26] Z. Janeczek, *Ignacy Potocki. Marszałek wielki litewski (1750-1809)*, Katowice, Orzesze: «Tompol», 1992, pp. 138-140.

[27] Ivi, pp. 140-141.

[28] Print available, a.o. in Archiwum Główne Akt Dawnych (The Central Archives of Historical Records in Warsaw, further quoted as AGAD).

[29] AGAD, Archiwum Sejmu Czteroletniego, sign. 16, p. 381.

[30] Janeczek, *Ignacy Potocki* cit., pp. 142-143.

[31] *Prawa kardynalne niewzruszone*, in Volumina Legum, Vol. IX, CCXXXVI, p. 204.

[32] W. Uruszczak, *Historia państwa i prawa polskiego*, Vol. I: 966-1795, Warszawa, Wolters Kluwer buisness, 2010, pp. 258-259.

[33] A. Trębicki (edited by), *Prawo polityczne i cywilne Korony Polskiey y Wielkiego Xięztwa Litewskiego to iest Nowy Zbior Praw Oboyga Narodów W którym są umieszczone wszystkie prawa Korony Polskiey aż do Roku 1791 do ostatnich zapadłych Seymowych ustaw* Tom Drugi w Warszawie, w Drukarni Piotra Dufour Konsyliarza Nadwornego Drukarza J.K. Mci i Dyrektora Drukarni Korpusu Kadetów, M.DCC. XCI [further citation as *Prawo polityczne* Vol. II], Nro 61, p. 73.

[34] Szcząska, *Odpowiedzialność rządu* cit., pp. 62-63.

[35] *Prawo polityczne* Vol. II, Nro 62, p. 74.

[36] *Prawo polityczne* Vol. II, Nro 63, p. 75.

[37] Volumina Legum, Vol. IX, XV, p. 58.

[38] Z. Szcząska, *Sąd sejmowy w Polsce od końca XVI do końca XVIII wieku*, in «Czasopismo Prawno-Historyczne», XX, n. 1, 1958, p. 114.

[39] *Osoby wybrane przez losy na sędziów seymowych*, in Volumina Legum, Vol. IX, LX, pp. 98-99.

[40] *Ordynacja sądów sejmowych na najpierwszey Sessyi w dniu 24 Miesiąca Sierpnia, Roku 1789, po zafundowaney podług prawa w Zamku*

Jego Królewskiey Mci Warszawskim, Sądowej Jurysdykcji, iednogłośnym składających Sąd zdaniem ułożona, in *Prawo polityczne*, Vol. II, p. 79.

41 Volumina Legum, Vol. IX, CCXCVII, pp. 243-249.

42 The letter quoted by Jan Dihm. J. Dihm, *Sprawa konstytucji ekonomicznej z 1791 r. (na tle wewnętrznej i zagranicznej sytuacji Polski)*, Wrocław, Zakład Narodowy im. Ossolińskich, 1959, p. 227.

43 Sessya 17 Maya 1791, Diariusz Sejmu Czteroletniego, AGAD, Archiwum Sejmu Czteroletniego, sign. 19, k. [chart] 224v – 234v.

44 Ivi, sign. 19, k. [chart] 227v.

45 Ivi, sign. 19, k. [chart] 228v.

46 Ivi, sign. 19, k. [chart] 230v.

47 Ivi, sign. 19, k. [chart] 234v.

48 *Seymy*, in Volumina Legum, Vol. IX, CCXCIX, p. 250.

49 *Wyznaczenie sądów seymowych w okoliczności niżej wyrażoney*, in Volumina Legum, Vol. IX, CCCLIII, p. 315.

50 «Suplement do Gazety Narodowey Y Obcey», Nro XIX, 11th April 1792, p. 174.

51 The Highest Criminal Court, established during the insurrection of Tadeusz Kościuszko in 1794, punished Stanisław Szczęsny Potocki, Franciszek Ksawery Branicki, Seweryn Rzewuski, Jerzy Wielhorski, Antoni Polikarp Złotnicki, Adam Moszczeński, Jan Zagórski and Jan Suchorzewski on death by hanging, eternal infamy, confiscation of property and dismissing from all posts. They were not convicted *in personam* and the sentence was executed *in effigie* on 29 September 1794. Other leaders of the Confederacy of Targowica, including a bishop of Inflants Józef Kossakowski, were punished to death in May 1794. At the end of June of that year, several cases of lynching occurred towards the people accused of the state treason, including bishop Ignacy Massalski.

52 *Sąd seymowy extraordynaryiny*, in Volumina Legum, Vol. IX, CDLXX, p. 452.

53 *Sądy Sejmowe*, in Volumina Legum, Vol. X, p. 150.

54 Z. Szczęska. *Z dziejów polskiego procesu karnego. Proces Adama Ponińskiego przed sądem sejmowym*, in A. Jankiewicz (scientific redaction), *Lex est Rex in Polonia et in Lithuania. Tradycje prawno-ustrojowe Rzeczypospolitej – doświadczenie i dziedzictwo*, Warszawa, Biuro Trybunału Konstytucyjnego, 2008, pp. 219-220.

55 Suchodolski on the session of 5 June: «[…] Moreover, the Marshal extended his authority in 1775, without an authorization of social entities wrote the document, as announced by a legitimately elected deputy, who did not know about this document, and such witness is a real witness; this action undertaken by the person of Marshal constitutes a criminal act; not only did he burden the Republic with a debt of 9000 but he also dared writing the Constitution being later approved – that was not even read in the States – and placed in Codice to the law». Sessya 114 z 5 czerwca 1789 r., Diariusz Sejmu Czteroletniego, <http://www.wbc.poznan.pl/dlibra/publication?id=20152&tab=3>, November 2017, p. 363.

56 Many people, including the King, protested against it. The Prince Adam Czartoryski and Stanisław Kostka Potocki, referring to the principle of personal privileges of the nobility expressed in the rule '*neminem captivabimus nisi iure victum*'. Sessya 115 z 8 czerwca 1789, Diariusz Sejmu Czteroletniego, <http://www.wbc.poznan.pl/dlibra/publication?id=20152&tab=3> November 2017, pp. 393-393v, 409v.

57 Volumina Legum, Vol. IX, LVIII, p. 98.

58 These circumstances were generally being mocked. Szczęska quotes a satire of Franciszek Zabłocki: «Good heaven! From the villain into the homeland avenger […] Nowadays the contrary, Adam as a prisoner and Ksawer as his judge», Szczęska, *Z dziejów* cit., p. 223, note 15.

59 Szczęska, *Z dziejów* cit. p. 223.

60 «Pamiętnik Historyczno-Ekonomiczno-Polityczny», VII, July 1789, pp. 740-741.

61 *The voice of the respectable Prince Adam Poniński, the Minister of Treasury and Finance of the Crown, on the Sejm Courts session of 29 September 1789, taken*.

62 *Zalecenie sądowi seymowemu*, in Volumina Legum, Vol. IX, CLXXVI, p. 182.

63 Szczęska, *Z dziejów* cit., pp. 226-227.

64 More about this interesting person and his complicated fates: Z. Zielińska Zofia, *Adam Poniński herbu Łodzia*, Internetowy Polski Słownik Biograficzny, <http://www.ipsb.nina.gov.pl/a/biografia/adam-poninski-h-lodzia>, November 2017.

65 Janeczek, *Ignacy Potocki* cit., p. 102.

66 See more: A. Tarnowska, *"To Which Constitution the Further Laws of the Present Sejm Have to Adhere to in All…" Constitutional Precedence of the 3 May System*, in U. Müssig (edited by), *Reconsidering Constitutional Formation. II. Decisive Constitutional Normativity. From Old Liberties to New Precedence*, Studies in the History of Law and Justice 12, Springer, 2018, pp. 113-172.

67 This issue was considered by the author in the above-indicated chapter. Tarnowska,*"To Which Constitution…"* cit., pp. 113-172.

68 *Deklaracya Stanów Zgromadzonych*, in Volumina Legum, Vol. IX, CCLXXVIII, p. 225.

69 The doubts regarding this issue was signalized by Anna Grześkowiak-Krwawicz: there is a message in the literature about the enactment of the Declaration only on 5 May, whereas the researcher claims that this happened directly in the course of further events in the Sejm chamber, on 3 May, after the return of the deputies from the Chair. A. Grześkowiak-Krwawicz, *Deklaracja Stanów Zgromadzonych z 5 czy 3 Maja 1791 Roku?*, in

«Kwartalnik Historyczny», n. 1, 1992, pp. 105-111.

70 For example, a letter from Potocki to the King, sent on 30 May 1791 from Vienna, AGAD, Zbiór Popielów sign. 392, k.[chart.] 1-9, in which he names the constitutional reform basically as a conspiracy under the leadership of the King.

71 Formally, Aleksandra von Engelhardt (Branicki's wife from 1781) was a niece of Grigorij Potemkin, a daughter of his sister Maria, but she was considered an illegitimate daughter of Catherine the Great. Potemkin owned a property within the borders of the Republic of Poland in the town Śmiła.

72 The King was to say it clear to Branicki: «the whole audience will be in the opinion that you will connect with Potocki and Rzewuski to start the activities against the work of 3 May». As relation in the letter to Augustyn Deboli of 26th October 1791, AGAD, Zbiór Popielów, sign. 413, pp. 218-222.

73 J. Łojek, *Dzieje zdrajcy*, Katowice, «Śląsk», 1988, pp. 141-143.

74 Łojek, *Dzieje* cit., p. 153.

75 Quot. after Łojek, *Dzieje* cit., p. 155.

76 See the relation from the session also in «Gazeta Narodowa y Obca», Nro IX, 1st February 1792, pp. 49-52.

77 «Suplement Nro IX do Gazety Narodowey i Obcey» 1792, p. 54.

78 Letter of Deboli to the King of 12th February z 12 lutego 1792 r., AGAD, Zbiór Popielów, sign. 415, quot. after J. Łojek, *Dzieje* cit., p. 160.

79 Quot. after J. Łojek, *Dzieje* cit., p. 151.

80 «Gazeta Narodowa y Obca», Nro IX, 1st February 1792, p. 50.

81 «Gazeta Narodowa y Obca», Nro IX, 1st February 1792, pp. 51-52; «Suplement Nro IX do Gazety Narodowey i Obcey», p. 53.

82 «Gazeta Narodowa Y Obca», Nro XCIX, 10th December 1791, pp. 395-398.

83 This wording was used by the anonymous author of the magazine *Citizen's Thought about a New Constitution*, n.p., n.d., reprint: A. Grześkowiak-Krwawicz (edited by), *Za czy przeciw Ustawie Rządowej. Walka publicystyczna o Konstytucję 3 Maja. Antologia*, Warszawa, Instytut Badań Literackich, 1992, p. 47. The discussion in the media and political literature related to this problem has been already been discussed in the ReConFort vol. I, see quot. 1.

84 Czacki was wrong here, because only 5 ministers – members of the Guardians, had a right to countersign, whereas he counted all ministerial offices. [T. Czacki], *O konstytucji 3 Maja 1791 do JWW Zaleskiego trockiego i Matuszewica brzeskiego litewskich posłów*, np. nd. [1791], pp. 67-68.

85 NN, *Myśl obywatela o nowej konstytucji*, n.p., n.d., reprint: A. Grześkowiak-Krwawicz (edited by), *Za czy przeciw* cit., p. 40.

86 [I. Potocki], *Na usprawiedliwienie się Jaśnie Wielmożnego Jmci Pana Dłuskiego Podkomorzego i Posła Woiewództwa Lubelskiego, z Manifestu przeciwko Ustawie 3. Maja Roku 1791 Odpowiedź*, np.nd. [1791], no pag.

87 [T. Dłuski], *JW.JP Tomasza Dłuskiego Podkomorzego Generalnego Woiewództwa Lubelskiego i z tegoż Wojewodztwa Posła Seymu Walnego Warszawskiego usprawiedliwienie się przed publicznością z Manifestu przeciwko Ustawie Dnia 3. Maia Ru teraźnieyszego 1791 nastąpioney, w Grodzie Warszawskim zaniesionego, swym, i JW. Józefa Suffczyńskiego Starosty Dypułtyckiego Kollegi swego Imieniem wyrażone*, n.d, n.p., no pag.

88 Letter of the King to Deboli, 7th May 1791, AGAD, Zbiór Popielów, sign. 413, k. [chart] 89.

89 *Dyzmy Bończy Tomaszewskiego Komissarza Cywilno-Woyskowego Woiewództwa Bracławskiego nad Konstytucją i rewolucją Dnia 3 Maja Roku 1791 uwagi*, np., nd. [1791/1792, later of the two known editions), p. 45.

90 NN, *Myśl obywatela o nowej Konstytucji*… cit., p. 41.

91 [T. Dłuski], *JW.JP. Tomasza Dłuskiego…* cit.

92 [I. Potocki], *Na usprawiedliwienie się*.… cit.

93 *Ibidem*.

94 Cfr. A letter of the King to Deboli, Varsovie ce 24. Xbre 1791, AGAD, Zbiór Popielów, sign. 413, pp. 263-267.

95 *Punkta, które najwięcej zdają się zastanawiać umysły obywatelów nad prawem trzeciego maja zapadłym, a piątego maja jednomyślnością uwieńczonym*, n.p., n.d., reprint: A. Grześkowiak-Krwawicz (edited by), *Za czy przeciw* cit., p. 30.

96 NN, *Myśl obywatela o nowej konstytucji*… cit., p. 46.

97 T. Maciejewski, The History of Polish Legal System from the 10th to the 20th century, Warszawa, Beck, 2016, pp. 22-23, 34-35, 45. The author of presented elaboration uses translations of courts names proposed by Maciejewski.

98 H. Kołłataj, *Listy Anonima*, Biblioteka Polskiej Akademii Umiejętności w Krakowie, Rkp. [manuscript] 176, k. [chart] 21, 21v.

99 The speech in extenso: *Mowy księdza Hugona Kołłątaja, podkanclerzego koronnego na sejmie teraźniejszym roku 1791 w Warszawie, w Druakrni Uprzywilejowaney Michała Gröllа, księgarza nadwornego J.K.M.*, pp. 41-72

100 *Oznaczenie deputacyi do napisania Codicis civilis et criminalis dla prowincji Koronnych*, in Volumina Legum, Vol. IX, CCCXXXIII, p. 289; *Wyznaczenie deputacyi do napisania Codicis civilis et criminalis dla W.X. Litt*, ibidem, p. 290. Cf. also relations in: «Gazeta Narodowa Y Obca», Nro LIII, z 2 Lipca 1791, p. 212.

101 Cfr. Introduction of S. Bobrowski, *Kodeks Stanisława Augusta. Zbiór dokumentów*, Warszawa, Nakładem Towarzystwa Prawniczego w Warszawie, 1938, p. V.

102 Uruszczak, *Historia*… cit., p. 266.

103 *Sąd ziemiański*, in Volumina Legum, Vol. IX, CCCLXXXIII, p. 370.

104 *Urządzenie wewnętrzne miast wolnych Rzeczypospolitey w Koronie i w Wielkim Xięstwie Litewskim*, in Volumina Legum, Vol. IX, CCCXXXVII, p. 291.