

The fiction of ministerial accountability in the Kingdom of Poland (1815-1830).

Consideration of the inefficacy of extrajudicial bodies in the field of criminal responsibility

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Introduction

The institution of ministerial responsibility has been of central importance to the transformation of an absolutist monarchy into a limited constitutional monarchy, where powers are kept in balance¹. The origins of this responsibility are often traced back to developments in the 17th and 18th centuries in the UK². Already, at the beginning of the subsequent century, this question provoked widespread public debate in numerous European, especially German-speaking, countries³. Therefore, it can come as no surprise that the issue of ministerial responsibility has been selected as a topic for the third and final focus of investigations within the ReConFort research project.

In the following paper, I will attempt to outline the intricacies of the ministerial responsibility in the Congress Kingdom of Poland before the outbreak of the November Uprising (i.e. in the period

1815-1830), with a special focus both on the public debate and on the pertinent legal regulations in this field.

At this point, I would like to pay my tribute to some of the great historians who paved the way for this research, including Stanisław Smólka, Hubert Izdebski, Franciszka Ramotowska and Janina Leskiewiczowa, who, with their insightful investigations into the Kingdom of Poland as well as their primary sources, have been of a great inspiration to my humble work and facilitated my research into the specific topic of ministerial accountability in the stated period.

Before I start my considerations, it is crucial to clarify the fundamental terms that will be applied in the ensuing article.

1. Terminology

a) *The term "minister" in the context of Polish constitutional history*

It would appear almost impossible to conduct qualitative scientific considerations without having clarified the significance of the most basic terms to be applied. Among them, primary importance needs to be attributed to expounding the meaning of the term "minister", which needs to be analysed both in the specific context of the 1815 Polish Constitution and in general terms.

Polish literature on the subject is far from extensive on this issue⁴. In recent constitutional studies, it has been claimed that the function of a minister in Poland, since its very emergence⁵, has been characterized by four specific features, namely, that he:

- forms part of the executive,
- is the head of a central office with competences pertaining to the entire state's territory,
- has dual function, in terms of being personally responsible for a certain scope of issues as well as a member of a collective administrative body,
- could be held both politically and constitutionally responsible for their acts⁶.

It is not the objective of this study to enter into detailed polemics with this definition, concerning diverse constitutional periods⁷, but rather to verify whether the ministers, as envisaged in the 1815 Constitution, can be accommodated into this formula or whether their position was characterized by different features. For this purpose, it is inevitable to analyse the regulations of the 1815 Constitution itself.

Curiously enough, the term "minister" appears in the text of the 1815 Constitution no fewer than 16 times. One of the most important connotations is its application in the specific context as a name for the «Minister of State [Minister Sekretarz Stanu] [...] who shall constantly reside about the person of the King»⁸ – a person conceptualized as an intermediary between the Russian Tsar and the King's representative in the Kingdom. It should be noted here that the "Minister of State" had quite a special function, being competent for «such foreign affairs as may concern the Kingdom of Poland»⁹ and assuming specific duties to fulfil towards the King's representative¹⁰, while residing in Saint Petersburg, the then capital of Russia¹¹. Consequently, it can be clearly stated that contrary to his title, "Minister of State"¹² did not bear any resemblance to other typical functionaries of the central executive in Warsaw.

Nonetheless, the Constitution did apply this term "minister" in different contexts. As for those latter meanings, it stated that it was the King who appointed ministers¹³, whose function within the structures of the power in the Kingdom was equally clearly defined: «All orders and decrees of the King shall be countersigned by a minister, the head of the department, who shall be responsible for anything the said orders and decrees may contain contrary to the Constitutional Charter»¹⁴. The 1815 Constitution even offered a clear definition of the term "minister", namely as head of one of the five "branches of the public administration"¹⁵. These "branches of the public administration" were conceptualized as commissions (e.g., "Commission of War", "Commission of Finances and the Treasury") that were «presided over and direct-

ed by a minister appointed for that purpose»¹⁶. Those commissions were staffed with counsellors of state¹⁷.

Those ministers, at the same time, formed part of a collective body, "The Council of State" [Rada Stanu], where either the King or the King's representative [Namiestnik] was to preside¹⁸. It was this Council of State, which – in the absence of the Russian Tsar in the Kingdom – being simultaneously the King in the Kingdom of Poland, what due to scarce visits by Alexander I Romanov and Nicholas I in Warsaw was usually the case¹⁹, had the function to «administer the affairs of the Kingdom in the King's name»²⁰. The Council of State was itself further divided into the "Administrative Council" and the "General Assembly"²¹. Part and parcel of the Administrative Council were the aforementioned heads of five departments of government – branches of the public administration²² – but their function within this body was restricted to counselling the King's representative and countersigning his resolutions²³.

The presentation of those structural regulations outlines the general meaning of the term "minister" in light of the 1815 Polish Constitution. In this context, he should be perceived as a member of the executive responsible for a given part of the state's administration, while also assuming the very important role of being responsible for countersigning the decisions of the King and the King's representative. It appears crucial to note that the actual position of ministers, as heads of the branches of the government, was moderated by the role of counsellors of state [radca stanu], a role that itself was not precisely laid down by the Constitution but instead described in the legal acts of an inferior hierarchy, known as

"Organic Statutes" [Statuty organiczne]²⁴. Those counsellors of state, together with ministers, formed part of the governmental commissions and were responsible for the departments within such commissions²⁵.

Therefore, already at this preliminary stage of those considerations, it can be concluded that the ministers established by the 1815 Constitution embodied three of the four characteristics specified above in the quoted definition. As for the last element, namely, political and constitutional responsibility, this shall be an object of the ensuing considerations, which, for its part, requires the definition of the key term of the "responsibility of a minister".

b) *The responsibility of a minister*

Having made the preceding considerations, it is possible to move onto another key term in this paper, namely, to the notion of the "responsibility" of the ministers. Here, a careful distinction has to be drawn between the terms "responsibility" and "accountability"²⁶.

Accountability, following a precise distinction elaborated in the English legal language, is understood as situation where «ministers have a duty to the Parliament to account and be held to account for the policies, decisions and actions of their department»²⁷. Various classifications have been formulated for this accountability, especially including the juxtaposition of explanatory and amendatory accountability²⁸. Explanatory accountability is to be understood as an obligation to «give information, to interpret information, and to justify action or inaction»²⁹, whereas amendato-

ry accountability forces a minister to alter some of his decisions under pressure from the Parliament. In contrast, responsibility incorporates the personal element of being the person to blame for specific conduct³⁰ – a fact to be established by a competent body, which could lead to adverse personal consequences for a certain individual having been involved in the functions of a minister.

This brilliant contrast will be applied throughout this paper to the Polish case in the period 1815-1830.

Further, a distinction between individual and collective accountability is also often highlighted. However, it seems that it possesses more theoretical than practical importance – especially bearing in mind the fact that, frequently, the prerequisites for individual accountability tend to be analogous to those of the entire ministerial cabinet³¹.

Another complex issue is the question about the subject competent to execute accountability. Somewhat troublesome here are the fundamental competences of the Parliament, given how ministers do not solely face the scrutiny of MPs. In fact, the complicated relationships, in which the heads of the central branches of the executive are implicated, renders them virtually «accountable to everyone»³² nowadays, including not only the Prime Minister, but also respective constituencies and the general public. As for the period of interest in this investigation, it is to be checked to what extent ministers were put in the societal spotlight in the Kingdom of Poland in the period 1815-1830; nonetheless, there can be no doubt that they were accountable to higher Russian authorities, firstly and foremostly to the Russian Tsar. Therefore,

it is correct to state that a minister faces different kinds of accountability, internal and external, formal and informal. This observation will constitute another further cornerstone of the subsequent considerations. Consequently, this paper will not be confined merely to one selected aspect of ministerial responsibility, such as possible criminal sanctions laid down in the Criminal Code of 1818, but will strive to encompass its diverse and possibly complex dimensions.

Before such endeavours can be made, the historical roots of ministerial responsibility in the Kingdom of Poland need to be sketched out. Such an analysis is of the utmost importance, given the possible continuities and discontinuities with regard to previous constitutional regulations on the Polish territories.

2. *The genesis of ministerial responsibility in the Kingdom of Poland (1815-1830)*

The creation of the Kingdom of Poland was a truly remarkable event for several reasons. It happened, even though the Napoleonic Duchy of Warsaw, its direct predecessor, was completely annihilated during the Great War in 1812 and even though Polish society strongly and actively supported the Napoleonic case against Russia³³, including military engagement. Further still, it was endowed with a seemingly liberal constitution, which introduced a constitutional monarchy³⁴ – a political system that was totally opposite to that of the Russian Empire, with which it was united³⁵.

In order to comprehend the origins of ministerial responsibility in the Pol-

ish Kingdom, it is necessary to ponder the shape of the regulations that had been developed in the numerous projects related to the Constitution of the Grand Duchy of Lithuania. Such an approach is necessary, since they were intrinsic parts of an indivisible historical process³⁶: following the creation of the Napoleonic state in Central Europe – the Duchy of Warsaw – in 1807, in an attempt to bolster the loyalty of the Lithuanian nobility on the eve of an upcoming confrontation between Paris and Saint Petersburg, the constitutional drafts for the to-be-re-established Grand Duchy of Lithuania began to be elaborated. This drafting, which considered some of the political regulations introduced by Napoleon in the 22 July 1807 Charter for the Duchy of Warsaw, substantially influenced subsequent regulations adopted in the Kingdom of Poland³⁷. Yet this link goes even further: in all three cases, the constitutions were granted or prepared to be granted by the magnanimous, albeit foreign, ruler who deemed it essential to win over Polish society. Perhaps this very specific political context also provided for their decisive weakness.

Here, the regulations of those drafts will be presented, starting with the project known as “*Ustawa Rządowa Wielkiego Księstwa Litewskiego*”³⁸, available from the Princes Czartoryskich Museum in Krakow³⁹, stemming possibly from 1812⁴⁰.

According to the regulation of Article 30 of this draft, the King’s representative was to preside over «the Council of Ministers, the Council of State», where he was to «receive the reports of the ministers according to the proxy given to him by the Duke»⁴¹. Further, the draft contained a special chapter (IV) dedicated to the Council of Ministers. Its opening article (Article 35) offered

a definition of who was to be understood as a minister, namely: «the heads of the public administration whom this legal act purveys the name of ministers». It was to the minister that «the execution of the law in his division was commended» (Article 44). The draft explicitly named four ministers: of internal affairs, of justice, of finances and of war (Article 45) and precisely specified the competences of each of them (Articles 46-49). While in office, they were temporarily incorporated into the Senate, becoming its members (Article 100). The ministries themselves were complex structures with diverse sections, meticulously described in the draft (Articles 165-184). The ministers were to be held accountable for the functioning of the respective ministries. This accountability was to be brought to effect during specific sessions (bearing the numbers 40 and 41) of the Parliament (Article 123). Unlike other sessions, the Lower Chamber and Senate convened for this purpose jointly, and it was here when the Grand Duke of the Duchy could order a given minister to present a picture of activities in the «ministry commanded to him in the last two years»⁴².

The principle of legal responsibility for the conduct of the minister was enshrined in Article 219 of the draft, which specified that «breaches of the law and duties of the senators, ministers, great functionaries» were to be adjudicated by the *Sąd Sejmowy*, a sort of the parliamentary court embedded in Polish constitutional history, for which a decision by the Senate (Article 220), preceded by an obligatory motion from the Minister of Justice⁴³, was required.

The overview of those regulations points our attention to the central importance of the *Sąd Sejmowy* as a body with key com-

petences in the field of ministerial responsibility. It is this *Sąd Sejmowy* that merits some more extensive considerations since it constitutes a body that was quite remarkable in the context of European constitutional history⁴⁴.

The very term "*Sąd Sejmowy*" is a general name for the judicial functions and competences of parliamentary gatherings of the Polish nobility, the *Sejm*, which, at least since the end of the 16th century, was considered to be supreme in the Polish Commonwealth⁴⁵. However, this court entirely ceased to function as the collapse of the Polish *Sejm* progressed⁴⁶, but was reinstated in a new form by a law from 1775⁴⁷. Since then, it acquired the function of a judicial body competent for considering infringements of the law by members of *Rada Nieustająca*⁴⁸ and criminal offences aimed at the state as the whole⁴⁹. This tradition was interrupted in the period of the Duchy of Warsaw – yet its revival by the projects inspired by the Russian Tsar needs to be perceived as nothing other than a very skillful political manoeuvre. The restoration of the *Sąd Sejmowy* surely must have pleased the Polish nobility, which was highly attached to its sole competences in the field of the judiciary and to the functioning of different types of tribunals⁵⁰. Moreover, already in the draft presented above (from 1812), a crucial change has to be observed, namely, that the *Sąd Sejmowy* – unlike its processor in the Polish Commonwealth – did not incorporate the King or the King's representative⁵¹. Therefore, it could have been perceived as an assurance of sovereignty for the nobility, a supreme controller in the projected state.

That said, the stipulations concerning the *Sąd Sejmowy* were not only confined

to the mentioned project, but they can also be encountered in another draft, elaborated by Andrzej Horodyski⁵². Similarly, as in the discussed regulations of the earlier 1812 project, there can also be found a stipulation that «his ministers, the members of the highest guard, are responsible to the main *Sejm* following the accusation of the deputies' chamber brought to the Senate. In such a case, neither the accomplishment of the orders of the King nor the forgiveness on his part justifies an official before the national laws» (Chapter VI, Section 1)⁵³. Should such an accusation be brought against a minister, a session of the Parliament could be immediately convened (Chapter VII, Section 25).

As for the remaining regulations concerning the ministers, in a separate chapter devoted to the Council of State, referred to, in this project, as the "Great Council", its members, known as the "great counselors" (Chapter VIII, Section 1), were also in charge of certain sections of the public administration (Chapter VIII, Section 6). This function was clearly separated from their consultative function within the Great Council⁵⁴ (Chapter VIII, Section 8), which expressed itself in the responsibility for elaborating projects related to laws or to act in an advisory capacity⁵⁵. Remarkably, the regulations contained in this chapter contain no countersignature requirement⁵⁶, which means that this draft is not entirely internally coherent⁵⁷. The exact reasons why this project differed so substantially from other similar drafts remain obscure. As a possible explanation, a convincing view from Marian Kallas can be cited, in which Andrzej Horodyski, who since 1813 could be counted among the close allies of Prince Adam Czartoryski, adopted a crit-

ical approach (typical for this circle) towards modern and liberal regulations of the Duchy of Warsaw, favouring «old Polish forms»⁵⁸.

In the last preserved draft, which was developed during the process of the creation of the 1815 Constitutional Charter, namely, in an extensive project for a future constitution elaborated by Ludwik Plater and sent to the provisional government of the Kingdom in a letter dated 26 August 1815⁵⁹, there can also be found numerous regulations concerning the position and functions of ministers. According to Article 117, ministers formed part of the Council of State – together with “great dignitaries”, “general directors” or “counsellors of state”. Alongside the project for a constitution for the Grand Duchy of Lithuania discussed above, highly characteristic in this draft is the position of a Secretary of State, who was to be responsible for foreign relationships in the Kingdom⁶⁰. The placement of ministers in the internal structure of power was that of the heads of a committee, who were also other functionaries in a ministry, such as general directors⁶¹. All those functionaries – and especially the ministers – could be held responsible before the Sąd Sejmowy, for which a decision by the Sejm (the Parliament) was indispensable⁶². But, here, a particular mode of the proceedings was introduced: the preliminary decision about putting a minister on a trial was to be taken by the Chamber of Representatives following a motion of 25 MPs or deputies (Article 252). Nonetheless, it did require confirmation from the Senate, but without the consent of the King (Article 252 *in fine*). Members of the Sejm Court, for their part, were elected solely by the Chamber of Representatives and did not require

confirmation from any other body (Article 253). Similar to earlier drafts, it was stipulated that ministers could take seats in the Senate (Article 260). By the same token, the scope of the competences for each ministry was laid down very precisely (cf. Articles 315–324).

The draft stated a formal obligation on the part of ministers to «closely implement the regulations of the constitutional law, laws and decisions of the King and of the government and will be held responsible in front of the Sejm Court for every committed infringement or abuse»⁶³. Those functionaries who dared to infringe the public rights guaranteed by the Constitution were considered to be traitors (Article 146) who should be adjudicated by the Sejm Court (Article 145). Similarly, all misappropriations and crimes committed in office, such as bribery, had to be punished (Article 147). Very far-reaching stipulations were contained in Article 148 of the discussed draft to secure the impunity of a minister, when he objected, after a decision was made by the King or of the national government operating on the King's behalf, to renouncing his function. As for further regulations concerning the responsibility of a minister, should any of them commit an act that would at the same time constitute a crime, he was to expect to be adjudicated by the Sejm Court, composed of all the lay senators as well as the selected 20 MPs and 20 deputies (cf. Article 344).

The overview of those regulations leads to the conclusion that there appears to be a strong continuity between the principles of ministerial responsibility as developed in the last years of the Polish Commonwealth and incorporated into the very text of the Constitution of 3 May⁶⁴ and the drafting

of the 1815 Constitution. What those projects have in common is the fact that they were elaborated by Polish intellectuals with different societal views and concepts. Of equal importance, they were all based on the idea of the Sąd Sejmowy, an extrajudicial body incorporated into the Parliament, which was to have jurisdiction over the infringements of ministers. Consequently, it turns out that the idea of absolute sovereignty of the nation, including a right to oversee, legally and judicially, the acts of the executive was very deeply ingrained in the Polish constitutional tradition. It was, however, the sovereignty of the nation that was perceived as almost solely composed of nobility with grudging acceptance of representatives of other estates, a sovereignty that was exercised by those elected to the Polish Parliament. This tradition was not overthrown by an ephemeral constitutional regulation adopted under French influence in the Duchy of Warsaw.

3. *The legal regulations forming the fundamentals of ministerial responsibility in the Kingdom of Poland*

Having outlined the regulations concerning the responsibility of ministers in the projects preceding the promulgation of the 1815 Constitution, it is time to scrutinize the principles that were in force in the Kingdom of Poland, following the granting of the Constitution in November 1815 by the Russian Tsar, Alexander I. Those regulations hinged on Article 82 of the 1815 Constitution, which clearly stated: «The heads of departments and the members of government commissions are answerable

to the Sąd Sejmowy⁶⁵ for every infraction of the Constitutional Charter and the royal decrees of which they may have been guilty»⁶⁶. The competences of the Sąd Sejmowy in this respect were explicitly laid down by Article 152, which clearly stated that this very body had competence for the “crimes of treason”. Furthermore, there was stipulated a competence of the Parliament to analyse the reports about the state of the country as specified by Articles 106 and 107 of the Constitution, which read respectively: 1) «The general report of the state of the country, which is drawn up by the State Council and forwarded by them to the Senate, shall be read in the two chambers united» 2) «Each chamber, by its respective commissions, shall deliberate upon this report, and send up an address to the King on the subject. This address may be printed». Following those cardinal regulations, three major types of ministerial responsibility can be distinguished:

- a) Constitutional responsibility
- b) Criminal responsibility
- c) Political answerability

What the first two types of responsibility had in common was the competent body for their execution: the Sąd Sejmowy. Fortunately, much can be said about this institution since the Sąd Sejmowy was famously installed in 1827 under pressure from the Russian authorities with the aim of adjudicating the supposed “traitors” – that is, the members of the so-called Patriotic Society [Towarzystwo Patryjotyczne]. Here, some information concerning this body will be restated for the international reader. It is important to stress that, in light of Article 152 of the Constitution⁶⁷, I think it can be rightly claimed that there existed a *privilegium fori* for the criminal accountabil-

ity of ministers and that they could not be tried anywhere other than before the Sąd Sejmowy, excluding all other ordinary and extraordinary judicial bodies in the Kingdom.

According to Article 157 of the Organic Statute on Governmental Representation, in order to put a minister on a trial for a criminal offence, a complaint had to be made against a certain minister, which, after being debated (and after the respective decision of the Chamber) was to be sent «to the King by the Council of State, in order to put the accused before the Court according to Articles 116 and 152 of the Constitution»⁶⁸. Such a procedure – contrary to the apparent model adopted by the Constitution⁶⁹ – did strengthen the position of the King, who acted as an intermediary between the parties. A legal vacuum existed concerning the competences of the Council of State and especially whether it could supplement the complaint with its own opinion or whether the King had room for manoeuvre here.

The only historical case of the functioning of the Sejm Court in the period 1815–1830 has been – from a legal perspective – extensively described in the Polish scientific literature following the spectacular process of the Patriotic Society⁷⁰. This process deeply shook public opinion, even though this shock found no resonance in the press of the Kingdom at the time. This stemmed from the fact that the press was heavily censored⁷¹ and journalists had no access to the proceedings, which were conducted in secret⁷². What has a universal meaning is the regulation concerning its functioning as promulgated by Tsar Mikołaj in 1828 as a separate statute, after having been elaborated by the Administrative Council in March 1827⁷³. This regulation is

of a procedural character – all of the rules incorporated in this legal act are related to the mode of proceedings in front of the Sąd Sejmowy. It appears significant at least for three reasons. Firstly, never before in Polish constitutional history had separate rules for such proceedings been laid down. Secondly, the very necessity to create such special rules introduces a question mark⁷⁴. Thirdly, the acceptance of those procedural rules was the result of a fierce political battle between Duke Constantin, who elaborated his own project and asked his brother, Tsar Nicholas, to accept it directly, and Prince Drucki-Lubecki, who defended the competences of the Polish authorities in this respect⁷⁵.

For those reasons, it is imperative to briefly look into those regulations, which reflect the institutional milieu in which the possible criminal responsibility of ministers would have taken place – had it been brought into effect during the constitutional period of the Kingdom of Poland.

This statute was issued in Saint Petersburg with the date of 18 April 1827 and had barely 92 articles. It offered a clear role to the parties in the process with the crucial duty imposed on the persecutor to find the objective truth (Article 25). An essential role within those proceedings was to be attributed to the Delegation of the Sejm Court, responsible for collecting evidence⁷⁶, which, when it was sufficient, was to be presented before the Sejm Court (Article 39) with the objective of adjudicating the question of guilt concerning the accused persons. A minor exception to the normally secret character of the relationship between a lawyer and the accused was specified in Article 44 of the statute, which obliged the Clerk of the Court to be pres-

ent during such consultations. However, due to the fact that Mr Urmowski, a judge from the Court of the Appeal, was appointed to this role⁷⁷, and bearing in mind that the accused during the second stage of the process managed to bribe the officers in the prison where they were being held and consequently succeeded in organizing meetings to settle a common version of the statements, this regulation did not acquire much practical importance⁷⁸.

The main proceedings – which were to have the character of a public hearing of the Sejm Court – were to be preceded by the charge’s presentation⁷⁹. Nonetheless, the *in dubio pro reo* principle was explicitly acknowledged in Article 61, which also guaranteed the objectivity of the Sejm Court (Article 61 *in medio*). Even though the accused had been awarded the right of defence, it was also underlined that the defendant could not put forward anything that would be against «the conscience or respect due to national power and the laws»⁸⁰. In the same vein, any accused who wanted to offer further explanations had to do so with “modesty and respect” (Article 70). However, the Court had total freedom as to the evaluation of proof within the process (Article 73), but the criminal sanctions that were to be inflicted were chosen from among those specified in the 1818 Polish Criminal Code (Article 76⁸¹). The very essence of the Sąd Sejmowy expressed itself in the fact that it was merely an ad hoc court, established for one particular case. In order to ensure its effective functioning, should the quorum of 25 senators not be reached, it was to be supplemented with members of the Supreme Court (Article 78).

An evaluation of those rules proves that they appeared fairly neutral and apt in order

to ensure just and fair proceedings. Thus, it became possible that, on the basis of those rules, the Sąd Sejmowy could – notwithstanding the immense pressure from the Russian authorities⁸², who were convinced about the illicit character of *Towarzystwo Patryjotyczne*⁸³ – issued acquittals or mild verdicts, clearing all the accused of the treason charges⁸⁴.

It would, however, be a great mistake to overlook the important fact that the Sąd Sejmowy was furnished with rules followed a decision of the Russian Tsar, which varied from the generally binding post-Prussian laws. This itself appears symbolic for highlighting its position in the internal structure of power. The judges of the Court, while being Senators and, for this reason, subject to potential criminal and constitutional liability, were in fact expected to be loyal and yielding towards Russian forces. Defying this expectation led to the judgement of the Sąd Sejmowy, made on 30 June 1828, being kept secret and unpublished for several months⁸⁵. The senators who were members of the Sejm Court, even though they accomplished their duties, were forced to stay in Warsaw as long as the Tsar failed to acknowledge the verdict, a decision that was spontaneously taken by the outraged Duke Constantin, albeit subsequently clothed in a legal form of the decision of the Administrative Council⁸⁶. In fact, Duke Constantin, in secret correspondence to his brother, urged him not to accept this judgement as a «mistake of the Court»⁸⁷. Contrary to that, after Tsar Nicholas I posted his views on the decision by the Sąd Sejmowy to the Polish government of the Kingdom on 29 August 1828, Prince Drucki-Lubecki did manage to formulate, in the name of the remaining members of the Administrative Council,

a project for a joint opinion⁸⁸. This subsequently influenced the final statement by this body, highlighting the fact that the Court, legally speaking, did have to issue such a judgement due to the legal statutes in force⁸⁹. Tsar Nicholas I grudgingly accepted the judgement, yet combined it with a reprimand of the senators⁹⁰, which was partially facilitated by the international position of the Russian Empire, entrenched in a difficult war with Turkey⁹¹. Without analysing the details of this correspondence more closely, it is nonetheless clear how fiercely the Polish authorities had to fight in order to defend constitutional order in the Kingdom⁹².

Eventually, the process before the *Sąd Sejmowy* and the verdict of the Court had a unifying impact on Polish society, uniting it against the Russian authorities and setting out a thin red line that could not be crossed, even by those who supported accommodation with Russia⁹³.

But the rules discussed here did not specify anything about the substantial rules for this responsibility, rendering it necessary to observe the rules of the substantial criminal law, i.e., the Polish Criminal Code of 1818⁹⁴.

The Criminal Code of 1818 contained a specific chapter solely devoted to state crimes. As Article 64 stated, among state crimes, three offences should be noted: crime of *lèse-majesté*, rebellion and treason. The following precepts (Articles 65–67) provided definitions of those crimes, which were conceptualized as common crimes, punishable also when barely attempted (Article 69). Of more practical importance, however, appeared in the regulations contained in Section XI of the Criminal Code, incorporating crimes of abuse of power in

office. Such acts were declared⁹⁵ to be felonious when «an official, contrary to the Constitution and the law, brought about a great damage, be it in property, be it in good faith, freedom or in the rights of others, and if he acted with particular anger and wickedness», which applied in the following cases:

- A. When a minister, a head of a section, signs a disposition of the King or the King's representative, which is contrary to the Constitution or to the law,
- B. When a minister, a head of a section or a member of the governmental commissions signs or issues decisions, which are against the Constitution, Organic Statutes, laws, the decisions of the King or the King's representative [...]
- D. Every official, which testifies untruth in official issues,
- E. Everyone who denounces a secret commended to them with a dangerous result⁹⁶.

Brief scrutiny of these regulations is necessary in order to enable the threshold of criminal liability to be identified. Such liability is, as it is generally known, dependent on fulfilling two requirements concerning two opposite elements of the crime: objective and subjective. Consequently, in the case of the stipulation quoted above, only such countersignatures in breach of the Constitution or the legal order, which were simultaneously committed with one of the highest forms of intent – “wickedness” – and resulting in “great damage” could lead to criminal persecution. However, in fact, only this first, subjective element can be perceived as a significant limitation of the responsibility of ministers: according to Article 25 of the 1818 Criminal Code, an attempt to commit a crime, which failed due to a «lack of strength, coincidence or unforeseen external obstacles», was equalized with the consummated crime, while there

was no definition of great damage, which exposed this statute to an unalloyed freedom of judicial interpretation⁹⁷.

Summarizing this first type of ministerial accountability, it can be stated that it was, for the most part, applicable to the body competent to exercise it in the first and last instance, and secondly, the procedural rules. Due to the explicitly⁹⁸ and implicitly⁹⁹ pronounced position of the King – the Russian Tsar – it was easy to render it fictitious.

As for the very constitutional responsibility itself, there are few if any regulations that implemented the significance of the proclamation made in Article 82 of the Constitution¹⁰⁰: neither the Organic Statute of the Senate¹⁰¹ nor the statute of the Chamber of Deputies, i.e., extensive internal regulations concerning its functioning or any other ordinary law adopted in the Kingdom of Poland, appears to have contained any stipulations in this respect¹⁰². Only in the Organic Statute on National Representation was it stated in very general terms that ministers are accountable and their «complaints and representations against them» could be checked and deliberated over by the Sejm¹⁰³. This is highly characteristic of the position of the Sejm, where such «complaints and representations» could be taken into consideration «after all the aforementioned activities [of the Sejm] have been accomplished»¹⁰⁴. Therefore, I am inclined to say that, contrary to the views of some of excellent legal scholars¹⁰⁵, it is hardly possible to speak about a separate constitutional liability, different from a criminal one, as there were no sanctions that could possibly have been imposed on a minister for the illicit countersignature of

a governmental act other than the criminal ones.

A possibly different type of liability that could be distinguished as having formal roots in the 1815 Constitution is quasi-disciplinary responsibility. According to Article 30, every public official could be freely dismissed by the same power that nominated them¹⁰⁶. However, there existed no formal procedures in this respect, even though, in the statute on governmental commissions in Article 25, it was stated that ministers were responsible for a «lack of diligence in completing the decisions of the government»¹⁰⁷, formally also in front of the King's representative [Namiestnik].

Rather, the Russian Tsar expressed his disapproval or content with ministers by taking informal measures, as in the correspondence addressed to ministers or messages meant to reach them. The primary importance in this respect can be attributed to the position of the Secretaries of State, Ignacy Sobolewski and Stanisław Grabowski, who met with Russian Tsars regularly to discuss matters concerning the Kingdom of Poland, while conveying the will of the Tsars to the Polish authorities¹⁰⁸. Thanks to this correspondence, the attitude of the highest Russian ruler (and simultaneously of the Polish King) to the ministers could be expressed very clearly¹⁰⁹. We have preserved cases of numerous expressions of approval by the Russian Tsar towards one of the most influential ministers in the entire Kingdom of Poland, i.e., Prince Drucki-Lubecki, who headed the Commission for Income and Treasury¹¹⁰. But this could also have taken the form of a clearly condemnatory statement: «Il faut désaccoutumer le Prince de l'inexécution de mes ordenes!»¹¹¹, which was transmitted to Prince Lubecki as an

alleged statement from the Tsar in a letter from Turkuł on 2 September 1829.

But, the more we read into the preserved correspondence between the highest functionaries from that period, the more we have to understand that it was rather an extremely complicated diplomatic game between various prominent actors of that time, including Prince Drucki-Lubecki, Duke Constantin, Senator Novositzoff and Józef Zajączek, the King's representative. In fact, it had little to do with legal and clearly structured accountability of power, which had a procedural character and was to be executed by an impartial body. Rather, it was simply pure politics, with all its brutality and lack of rules¹¹².

Therefore, it is hardly possible to speak about disciplinary responsibility understood as a formalized set of procedures governing it.

The question about the civil responsibility of ministers did not arise in practice, since the very construction of the liability of the state was not known in the Kingdom of Poland¹¹³. The indemnifying function of the criminal process in light of the regulation of the 1818 Criminal Code had also not been developed yet¹¹⁴.

However, there is good reason to consider speaking about the political answerability of ministers, which had its foundations in Articles 106 and 107 of the Constitution. Following the duty of the State Council to present a report about the state of the country, which was to be read in each session of the Parliament, a right to make remarks about the report was granted¹¹⁵. Those remarks constituted a legal obligation to purvey information about the state of the country and were prepared respecting the divisions between different ministries;

moreover, they constituted a specific type of a discourse, where, at least on certain occasions, subsequent reports contested the remarks made about the previous one¹¹⁶. However true it might be that those remarks were not formulated in a personal manner, they did incorporate precise suggestions for alleviating situations considered as breaches of the law and the malfunctioning of the respective ministries. Concrete cases of answerability will be discussed in the ensuing part of the article.

Therefore, summarizing the modalities of the legal responsibility in the Kingdom of Poland in the period 1815-1830, it appears right to state that criminal and constitutional responsibility pertained to two different spheres. Only in a few cases did a breach of the Constitution amount to an ordinary crime – as in the case of a severe abuse of power. At least in some cases, a simple breach of the Constitution would not simultaneously reach the threshold of criminal liability, e.g., when a minister completely refused to provide the Sejm with information concerning his ministry. It has to be noted that a semi-legal vacuum existed here¹¹⁷: if a minister behaved in a way that was clearly inconsistent with the 1815 Constitution, he could nominally face responsibility (cf. Articles 30 and 68 of the Constitution), for which a decision by the Senate to adjudicate the case of such persons by a special court – the Sąd Sejmowy – was indispensable (Article 116). But, at the very same time, the Constitution specified the competences of the Sąd Sejmowy as being restricted to the mere cognition of cases where crimes were imputed to ministers¹¹⁸. This cognition has neither been altered nor extended by a more specific regulation of

the Organic Statute concerning the Senate¹¹⁹.

In light of those considerations, it is very difficult to speak about any kind of distinctive constitutional accountability. It can be a contentious issue to determine to what extent the right of each Sejm to put forward accusations¹²⁰ against ministers to the King could be treated as any kind of substitute for veritable constitutional responsibility¹²¹, but it appears that its decisive element – i.e., the fact that it could be solely exercised by the Parliament – is missing. Therefore, even though there was a legal basis for this kind of liability – unequivocally formulated in Article 116 of the 1815 Constitution – it seems that there were only clear rules for criminal responsibility¹²².

Consequently, it remains necessary to look into the context and understanding of those regulations as manifested in the scholarly commentaries and the public debate about them.

4. The rules of the ministerial responsibility put into practice: about understanding, commenting on and debating Articles 82 and 152 of the 1815 Polish Constitution

The ensuing central part of the considerations in this article will be devoted to presenting the public and scholarly debate pertaining to the aforementioned regulations of the 1815 Constitution and of the 1818 Criminal Code. As an introductory remark, however, three crucial variables shall be explicated.

Firstly, the actors and the audience as a setting for this debate. Secondly, the scenography of this sphere of public commu-

nication, namely, the press and its limitations, especially the censorship introduced upon the decree of the Russian Tsar. Thirdly, the decimated actor crew: limitations associated with substantial losses of the sources pertaining to the Kingdom of Poland from 1815 to 1830 during the barbarous period of the Second World War.

Fortunately, the development of the press in the Kingdom has been an object of detailed research conducted within general historic investigations, which have provided us with valuable background data¹²³.

The public debate on such central issues as the responsibility of the functionaries in power obviously has a very long tradition¹²⁴. The ways of participating in it, the number of the people involved and the modes of the debate have also changed to a profound degree. The approach of the ReConFort project, which, in collecting the sources that distinguish between public and private modalities of the discourse, has undoubtedly great significance. While this first type of public discourse, such as parliamentary debates, has several hundred years of tradition, in the aftermath of the Enlightenment, a truly remarkable breakthrough was achieved by the press, whose publications were starting to be issued daily¹²⁵. Such a transformation also took place in Poland at the beginning of the 19th century, creating a wide group of potential participants in public political debate, for which only literacy, an interest in public affairs and relatively small sums of money for the purchase of a newspaper or entry fees to discussion clubs were necessary. Therefore, before the phenomenon of the rise of the modern press is analysed more closely, a look into the group of people who potentially could have had a special interest in public affairs – namely

into those inhabitants endowed with voting rights in the Kingdom of Poland – needs to take place¹²⁶.

The very population of the Kingdom of Poland in the short period between 1815 and 1830 changed dramatically. While, in 1816, there were barely 2,717,000 people inhabiting eight voivodeships, the population rose sharply to 4,137,000 in 1829¹²⁷. This vast population was extremely unevenly spread, with only the city of Warsaw having more than 100,000 inhabitants¹²⁸. In light of legal regulations adopted in the Kingdom of Poland concerning suffrage rights, such rights were awarded not only to the nobility, but also to certain merchants, teachers and priests as well as to all free peasants who paid any tax on their land property¹²⁹. According to general historical studies, the group of people with voting rights in the Polish Kingdom is estimated to have superseded 100,000¹³⁰. An absolutely revolutionary element in Polish history concerns giving suffrage certain rights to farmers, who were not in serfdom but merely paid rent¹³¹.

Naturally, certain caution has to be exercised. Surely not all voters could effectively develop their interest in public affairs, since legal regulations can be found addressing the needs of this part of the electorate, which was still not able to write or read¹³². The endeavours to deny people who were illiterate from their suffrage rights remained fruitless¹³³; but, as the attempts to influence the voting processes by government intensified significantly after 1820, the interests of the wider circles of the population in the elections of Sejmiks and municipality gatherings (*Zgromadzenia Gminne*) were in turn stifled¹³⁴. Theoretically, however, the requirements to

obtain suffrage rights were not elevated, thus maintaining an immense number of potential voters.

Among the population of the Kingdom of Poland in the period 1815-1830, the absolute majority could neither read nor write¹³⁵, and the estimations of the number of potential readers conducted by Jerzy Łojek led to the conclusion that there were up to 9,000 readers of the informative press: «[t]he gross number of potential buyers of all type of literal, political, social and entertainment journals in Warsaw in 1824 surely did not exceed 3-4,000»¹³⁶. Even taking it for granted that the actual number of persons regularly familiarizing themselves with the press was substantially higher, since newspapers were circulated and could sometimes reach as many as 5 or more readers¹³⁷, this still only referred to a tiny fraction of the great population of the Kingdom. Those numbers were not distorted by the import of foreign newspapers, since before all the more liberal and mostly foreign journals were prohibited on 19 August 1822, their total number – according to the data obtained during general historical investigations – did not exceed 70 copies, which were mostly French¹³⁸.

Following this significantly limited scope of potential readers, the number of journals was also very low. Once again referring to the conclusions of Jerzy Łojek, a researcher specializing in the Polish press, it altogether amounted to 99 titles¹³⁹, which – at least intermittently – were published in the Kingdom of Poland between 1815 and 1830. Some of those newspapers did not manage to issue more than a few issues due to financial difficulties, a lack of the readers or problems with censorship¹⁴⁰. Statistical estimations reveal that the most popular in-

formative newspaper – *Kurier Warszawski* – could have circulated approximately 2,000 copies in 1830¹⁴¹. The *Kurier Warszawski* was – somewhat similar to nowadays – replete with short, simple articles of little informative value, while its main contribution concerned encouraging wider circles to acquire the ability to read and write¹⁴².

Even those publications that succeeded in maintaining their position on the market were marred by diverse problems, such as high running costs¹⁴³ or extremely high fees imposed both on foreign newspapers imported into the Kingdom¹⁴⁴ and on local titles distributed within its territories¹⁴⁵.

The legal limitations of the freedom of the press, as well as the freedom of speech in general, in the Kingdom of Poland were very significant. It is highly symbolic to quote the author of comprehensive research into the Polish press of this period, who stated that: «Since 20 June 1827, the *Sąd Sejmowy* completely vanished from the news of the journalists [...] according to the newspapers of the Kingdom, it could be surmised that there is no political process in Warsaw whatsoever»¹⁴⁶. But they did not solely concern certain political events that were perceived as dangerous by the Russian authorities¹⁴⁷; rather, they also responded to foreign requests and pressures, which can be illustrated by the case from 1824, where, following a message from Nesselrode and Matternich, the book *Lettres du roi Jean III Pologne écrites en 1683* was banned, just as it had been banned in the Austrian Empire¹⁴⁸.

It is remarkable that, since the very beginning of organized preventive censorship, founded on the formalized dispositions of the authorities of the Kingdom, i.e., from the decisions issued on 22 May and

16 July 1819, as well on 29 January 1822, by the King's representative (Namiestnik)¹⁴⁹, there were no precise rules laid down for the functioning of censorship until the concerted efforts of Duke Constantin and Novosiltzoff in April 1820. Those rules were then subsequently laid down by the committee for religious denominations and education and, as the censors who were nominated were mostly priests, they were formally subject to the Commission for Internal Affairs¹⁵⁰. Only subsequently did Alexander I commission Capo d'Istria to convey instructions to his representative in the Kingdom upon the organization of censorship¹⁵¹. Furthermore, since 1821, its organization was substantially refined by establishing salaries for censors and selecting harsher personalities to exercise its duties¹⁵², by imposing censorship on all foreign newspapers imported into Poland and writing about Polish issues¹⁵³, and finally by (illegally) establishing a quasi-bureau for censorship headed by the reactionary Józef Kalasanty Szaniawski¹⁵⁴. This bureau received substantial amounts of money, transferred secretly, as it could not be revealed in the budget of the Kingdom¹⁵⁵. It is worth highlighting that censorship did go so far as to include court announcements printed in the daily press¹⁵⁶.

It should be stressed that the entire process setting up censorship took place in the evident breach of the Constitution and, even though the key decisions of the King's representative in this respect were countersigned by ministers or counsellors of state, they never faced any legal responsibility for their acts – a fact that will be discussed below¹⁵⁷.

That said, this situation is not surprising in light of the widespread and persuasive

ensorship in the Russian Empire, existing there pretty much since the arrival of the print industry in Russia, i.e., since 16 October 1796¹⁵⁸. Already before the decisions of 1819 were taken, in the Kingdom of Poland in 1815, there had existed preventive censorship by means of customs, with the Ministry of Religious Affairs and Public Enlightenment responsible for its execution¹⁵⁹.

Finally, it is to be stressed that an important part of the archives concerning the history of the Kingdom of Poland in the period 1815-1830 was irretrievably lost during the Second World War. It concerns not only such documents as protocols of the Senate¹⁶⁰, documents concerning the *Sąd Sejmowy*¹⁶¹ or ministries of the Kingdom of Poland, such as the Ministry for Internal Affairs¹⁶², or reports periodically made about the functioning of censorship submitted to the Administrative Council¹⁶³, but also documentation from particular ministries, such as the governmental Commission for Internal Affairs and Police. The same concerns many important archives of the protagonists of the public debate in this period, such as the archive of the Niemojowscy family from Marchwacz.

This has been an area of investigation on the ReConFort project, with the aim of retrieving the traces and crumbs of the public debate about ministerial responsibility. During the research, the main journals of the Kingdom of Poland have been scrutinized¹⁶⁴, as well as various published sources, ranging from political speeches¹⁶⁵ or pamphlets¹⁶⁶, as well as correspondence from the main political figures of that period¹⁶⁷ and their memoirs¹⁶⁸, to sermons¹⁶⁹, academic treatises¹⁷⁰ and official documents¹⁷¹. Unpublished sources, obtained

from major Polish libraries in the field of legal history, including the Bibliothèque Polonaise de Paris, The Princes Czartoryskich Library in Cracow, the Central Archives of Historical Records in Warsaw or the PAU and PAN Library in Cracow, as well as several other minor libraries¹⁷², have also been used and, where relevant, added to the Internet database of the ReConFort project¹⁷³.

As can be expected following those general conditions that existed in the Kingdom of Poland in the period 1815-1830, the public debate about ministerial accountability was far from comprehensive. But there are some exceptions.

One such exception, which bears, if not signs of the direct debate, then at least the expression of an interest in the rules of ministerial responsibility and their significance in a constitutional state, can be encountered in an extensive article with a very symbolic title, namely, "The Thoughts of a Constitutional Pole", printed in *Orzeł Biały*, a moderately liberal newspaper published by Brunon Kiciński in the period 1819-1820¹⁷⁴. In the first part of this anonymous¹⁷⁵ article, we can find the following statement:

Just like during the Sejm's debates, the clerks that are responsible should under no pretext hide behind the saintly and untouchable word 'king' in order to easier get proposals and projects through the Chambers, so no writer shall mingle it with his own opinions¹⁷⁶.

Yet this remark is only a prologue to more extensive commentaries, which are found in the second part of the article:

The Sejm is destined to make the clerks accountable, to consider whether in the laws, which had been presented to it as projects, the happiness or freedom of inhabitants does not face damage¹⁷⁷.

and subsequently:

The stronger the responsibility of the clerks is ensured, the more the friends of constitutional freedom will be calm about its completeness. With a courageous parliament, the national government will be more active; it will respect the Constitution and the order of public matters will become unshakeable¹⁷⁸.

In addition to such general theoretical remarks, the anonymous author of the text goes onto say:

the responsibility of the lower clerks, the responsibility of ministers is only an illusion. If it were necessary to sue the Minister of War for infringement of every gendarme or [to sue] the Minister of Police for false denunciation by every policeman, then there would be no certainty for anyone¹⁷⁹.

Meanwhile, the responsibility of ministers is perceived as being part and parcel of the equilibrium that the constitutional King was supposed to uphold between the distinctive powers:

Therefore, when the executive power forgets and exceeds its borders laid down by the law, the King, according to Articles 30 and 47 of the Constitution, makes it accountable¹⁸⁰.

Apart from that, in 1820, a statement of an even more general character was published in Volume 1, Issue 4, of *Orzeł Biały*, one of very few newspapers, which, as we have already seen – until its closure by the Russian authorities on 30 September 1820 – ventured towards asking more outwardly political questions¹⁸¹:

The clerk has no right and shall not limit personal freedom and the freedom of conviction there, where the laws, applying equally to the government as well as the nation, have awarded choice to the fullest extent¹⁸².

Beyond that, some interesting information on how ministers in the Kingdom of Poland perceived their duties can be garnered from the letters of Prince Drucki-Lubecki to Ignacy Sobolewski, the Minister of State:

I will even admit that it seems to me that a constitutional budget should not be laid down until the income has been settled and I have to confess with sorrow that we have not settled systematically any tax or income¹⁸³.

In this period, with censorship still not being particularly severe, some general remarks about the responsibility of ministers were made in a lengthy article printed in *Themis Polska* concerning jurisdictional disagreements¹⁸⁴. Here, its anonymous writer states:

Now I will prove that only in this system is there, for society in general and for its members in particular, a guarantee; every other leads to impunity, every other gives no warranty. In a representative government, all the political feathers, that is, all the powers, are so balanced that none can become a tool of oppression. Then the administration, which, as one of the powers must be slightly curtailed, also has its discipline. All the deeds fall into two main sections: the decisions of the King, the decisions of the minister. Both come under the responsibility of the ministers, [under] the responsibility, which, in a constitutional government, floats like the sword of Damocles over every executive act, since everyone without exception, be it a simple administrative or a judicial administrative clerk, is a result of the decision of the minister or the countersigned resolution of the King. Here is the guarantee. How to secure it, how it can be made effective, this lies beyond the scope of our paper; it suffices that it is guaranteed in law.

Finally, a highly accurate summary of ministerial responsibility is offered in the famous Manifesto of the Polish People, adopted by the Polish Sejm on 20 Decem-

ber 1830 and published in the following year in Paris:

Vainly, some powers and representatives of the people have presented the King with a picture of the wrongs that have been committed in his name: not only were the breaches not halted, but, further, the responsibility of the ministers and the governmental powers, due to the immediate actions of the brother of the Tsar and the discretionary power given to him, fully vanished¹⁸⁵.

Unfortunately, other instances of public discourse in the press concerning this question can hardly be found. Yet, during the project, attention has also been directed at other modalities of the discourse, including unpublished works and private correspondence. It has been those types of sources that have provided us with some, albeit very limited, remarks about ministerial responsibility. They can be found in a manuscript of a quasi-commentary to the Constitution, elaborated by T. Ostrowski¹⁸⁶. In this paper, in § 70, the author makes the following statement:

The orders of the King or signed by him, should they contradict the Constitution and the laws, should never be deemed to be stemming from him, because the King never wants against the Constitution and the laws. These are the rules that stem from all the Constitutions. The reason for similar orders is always the consent for such a move by ministers. A minister who would dare to falsely convince (?) his King to accept his view (?) will be held responsible for it and, after (a motion?) is sent by the King to the deputies of the Chamber, accused in front of the Senate and adjudicated¹⁸⁷.

Among the scarce materials that have been preserved thus far, this statement, which remains unpublished, appears to be truly remarkable. It clearly manifests that – at least in certain parts of public life in the Polish Kingdom – a doctrine that the King

could do no wrong, as his ministers were responsible for his acts, was wholeheartedly accepted.

However, we also know from older secondary literature, based on sources, which nowadays have been apparently lost, that, despite the supposedly liberal attitude of Alexander I, in his secret correspondence, he severely criticized the Polish Sejm, «prohibiting namely the Chamber to criticize the deeds of the government»¹⁸⁸.

5. *The motions and attempts to hold ministers in the Kingdom of Poland legally responsible: cases of the accountability and responsibility*

Another source situated somewhere in the middle between public and private debate, albeit highly likely to reveal the attitude of Polish society to its governing ministers, are the preserved protocols of the Sejm. It was here where the motions calling for ministers to be put in front of the Sąd Sejmowy had to be raised and accepted.

Due to the incompleteness of the preserved sources, it is necessary to limit ourselves to only some of the protocols of the Sejm from 1818, 1825 and 1830¹⁸⁹. Such an analysis might prove to be of interest in light of the fact that it has been conducted in the scientific literature only to a very limited extent.

The attempts to hold ministers answerable, as well as unmask their incompetence and negligence, did take place at almost every Sejm. Here, a case of the criticism waged by Deputy Wincenty Niemojowski, the leader of the liberal opposition¹⁹⁰ in the Sejm in 1818, shall be presented as an outspoken example. In his fiery speech held during the

16th session of the Sejm, on 24 April 1818, after having censured «the unconstitutional tendency of our ministers»¹⁹¹, whose *par excellence* example had been not accepting or debating any of the budgets, while also introducing taxes without the consent of the Parliament, he concludes:

Let us bring to the throne of the blessed Lord, be it as a petition, be it according to Article 157 of the Organic Statute on Representation in the form of the accusation of the Ministers, those grave infringements against the Constitution¹⁹².

A further vivid instance of accountability (or, more precisely, of political answerability) are the statements that were formulated in the remarks of the Sejm about the reports of the State Council on the activity of the government and the state of the country. Elaborated and accepted by each Sejm session starting from 1818¹⁹³, they demanded that ministers should respect the Constitution and explicate their deeds. Here, I quote certain excerpts.

Already in 1818, the Senate wrote:

This time, Izba Obrachunkowa did not deliver information to the Sejm about the results and fruits of its works [...] it is to be expected that within time, which will elapse until the next Sejm session, it will surely be able to overcome its backlog and [...] will come as help to the Sejm Chambers in its important task of controlling all the incomes and investigating its legal spending¹⁹⁴.

Further, it signalled:

No, we all want the sanctity of the Constitution, but we all learn and wander erroneously due to the lack of practice and awareness. Only when everything will be assimilated, when the experience will show us mistakes and how things can and should go, then I say: the public official will be culpable if he acts against the Constitution since then he will commit a crime with full awareness that he acts wrongly. [...] And even though, on the one hand, [at this moment], it

would be incorrect to put the administration and ministers under the severity of the law for the infringements of the Constitution, on the other hand, the Senate would make itself most culpable if it, having noticed such deviations, did not inform the throne about them, as solely by such conduct the Constitution can take root¹⁹⁵.

And:

Finally, it remains [for us] to draw the attention of the King and our benefactor to the breach of one of the cardinal stipulations of the Constitution [...] that is, that none of them [i.e., of the ministers] ever countersigns the decrees of the blessed Lord contrary to the explicit warranty of Article 47 of the Constitution and against the entire spirit of the representative government, whose essential principle is the responsibility of the ministers. It ceases to be strict and viable; it ceases almost entirely if the decrees of the King are not countersigned by any ministers¹⁹⁶.

The importance that had been attributed to this issue can be understood by analysing the opening remarks formulated by the subsequent Sejm session in 1820. Here, the deputies, noting frequent references to the will of the King in the report presented to them, commented:

You do not have any more important decision on the part of ministers, you do not have refusals of the petitions of the Sejm, which would not be covered with the saintly name [of the King]. How much this means is contrary to a constitutional monarch, how much does it endanger the freedom of our deliberations, it is clear to everybody. [...] Very wisely, constitutional law puts ministers between the King and the people to be the shield of the monarch in all political quarrels; the Council of State places here the name of the monarch between the people and the ministers, as if it were up to the monarch to be the shield for the ministers. The King, in a constitutional government, does not act otherwise as through his ministers. [...] The person of the King is taken as perfect, the King can want no wrong, he cannot think about it. When the order is breached by the execution of power, the law pursues ministers

[...] the law supposes that, if the King abused his power, he will be brought to [such abuse] by his bad advisors, it attributes everything bad to them, it pursues and punishes them. [...] What would bring about the responsibility of ministers when they can protect their unconstitutional opinions with the sanctity of the person of the King. When ministers protect themselves with the name of the King, then the Sejm is forced either to yield before an absolute power or to fight with an un-touchable power. A miserable alternative!¹⁹⁷

In the entire period of the history of the Kingdom of Poland in the period 1815-1830, this fragment may be the most extensive and explicit formulation concerning ministerial responsibility. It confirms that, even if this question could not be publicly debated, the deputies to the Parliament strictly demanded respecting constitutional provisions. The longing for real ministerial accountability is somewhat in line with the then popular doctrine of Benjamin Constant¹⁹⁸. It was, however, expressed in the forms of admonitions and, as will be shown, it did not take the form of concrete motions to make them legally responsible.

During this Sejm, a reference was made to a remark issued at the previous one:

When, at the last Sejm, there was a request made that decisions should be supplied with the signature of ministers, he [the King] immediately ordered the execution of this principle. Solely one deviation from this general principle could be seen in the erroneous signing of the decision from 16 July 1819, not with a signature of a minister, but that of a counsellor of state, contrary to Articles 47 and 73 of the Constitution¹⁹⁹.

Similarly, in 1825, a criticism aimed at the governmental commissions and ministers can be found²⁰⁰. This took, e.g., the form of direct comments on the behaviour of the Minister of Treasury, Prince Drucki-Lubecki:

Indeed, the Prince Minister did not always use the means by which he took strict consideration of the Constitution, respect for rights and private property and good faith into account, which should always characterize all the acts of the government²⁰¹.

The members of the Senate, for their part, stated:

With great surprise, we have noticed that the governmental Commission for Justice breached Articles 138 and 139 of the Constitutional Charter arbitrarily, without a judgement of the court issued by judges²⁰².

or subsequently:

What a contradiction! It is the State Council and the ministers who, breaching their duties, do not occupy themselves with elaborating the articles of the Constitution, where it is explicitly prescribed. Rather, they want to develop this, in doing what they have no right to do, infringing legislative power, which is reserved for the Chambers of the Sejm, endangering the most precious national freedoms!²⁰³

Quite detailed are the remarks made about the Sąd Sejmowy by the subsequent Sejm session in 1830, extensively highlighting the infringements of the Constitution and the misconduct of ministers:

Your commissions cannot omit the abuses and extraordinary proceedings, which were committed by the ministers by stopping the accusation [?] of the persons, who were charged with state crimes and were later found to be not guilty by the judgement of the Sejm Court. But, as a result of illegal acting, contrary to the solemn declarations given to us and gratefully accepted by our Constitution, they suffered unbearable prison for a few years. What an awful example of disrespecting those principles of the Constitution, which protect the highest human good, personal freedom. It cannot serve as a justification for ministers that, until now, we, [according] to Article 159 of the Organic Statute, have not established, by a separate law, a way of conduct in similar mat-

ters. When such project in this respect, brought to the Sejm in 1820, was not accepted, it was the duty of the ministers to bring one to the Sejm in 1825, which did not happen even at this Sejm. On the other hand, no law, be it even brought and accepted by the Sejm, could, according to § 90²⁰⁴ of the Constitution, endanger national freedoms, when, as it has been proven above, in the case of such guarantees, pertaining to personal freedom, even the Sejm has no competence to weaken or change them. [...] 4. It is blaring abuse, which has been committed towards the [persons] sent to the Sąd Sejmowy, when the publication and execution of the decision of the Sejm was stopped. Moreover, the accused were sent abroad, so § 138 of the Constitution, which introduces the independence of the judiciary, has been breached. Furthermore, in § 139 of the Constitution, the influence of ministerial power was extended to the Courts²⁰⁵.

But it was not only the Sejm Court that prompted criticism of ministers:

Indeed, Article 162 of the Constitution states that the first budget of income and expenses will be approved by the King. But how many budgets have been approved by the blessed Lord, even though each year the budget is laid out by the State Council for approval of the blessed Lord? So, this article has already been fully executed. Further, the State Council has already abused it, presenting 14 budgets for the King's approval. [...] the State Council can no longer submit a budget for the King's approval without an obvious infringement of the Constitution, particularly Articles 91, 93 and 162. [...] The commissions [...] consider that the current Sejm should make a petition to the blessed Lord in which it shall be presented that Article 162 is already executed, that no budget but a constitutional one, accepted by the Chambers, can take place without explicit infringement of the Constitution, which had so solemnly been sworn in before God²⁰⁶.

Further:

The Minister for Internal Affairs and Police made a deal with the Polish Bank [...] Not entering into this deal itself, the minister, by such a compromise, violated the Constitution, which stipulates

that the income budget lasts for two years. So, how could the minister decide about the taxes for 16 years?²⁰⁷

Finally, the Senate once again complained about not respecting the duty of the government to present it with a detailed overview of its activities:

Article 106 of the Constitution clearly states that the reports of the State Council on annual activities of the government, together with bills will be laid before the Senate. [...] Detailed lists for every governmental division and accounts for every branch of public service would give us the opportunity to judge, in the most impartial way (just as we would like to) both the ardent attempts of ministers and the hindrances, with which they sometimes justify failure or procrastination²⁰⁸.

Overall, it has to be noted that the remarks on the activity of the government at the last Sejm in 1830 became much harsher and the compromising attitude, characteristic especially of the Senate, faded away. This can be attributed to the general disenchantment with Russian authorities and to a growing disbelief that the Constitution would be respected.

But it was not only the cases of answerability, perceived as demands to explain the conduct of a given minister, that absorbed the attention of the deputies in the Sejm. Far more crucial was the extensive debate that took place in the Sejm in 1820, which revolved around the project of the so-called Organic Statute for the Senate, i.e., a complex administrative regulation that was supposed to describe the functioning of this body, as well as a project concerning the Criminal Procedure, both presented by the Administrative Council. Those stormy

parliamentary debates, which marked a watershed in the history of the Kingdom, are worth analysing here more closely, since, as we will see, on many occasions, they referred to questions of ministerial responsibility²⁰⁹.

Firstly, the semblances of the very idea of non-responsibility on the part of the King can be found in the published, albeit heavily censored, diary of the Sejm in 1820, where it is stated that:

[...] finding that, in no government, the person of the monarch is as much a saint as in the Constitution, since the monarch neither errs nor is mistaken in his government, he recommended that, owing to the due respect for the throne, in the discussions between the representatives and the State Council about the work accomplished by it, [they] did not mention the saintly person of the blessed Lord²¹⁰.

However, it was the lack of any regulation on ministerial responsibility that became an important argument during the debates about the Criminal Procedure Code project, where Deputy Wincenty Niemojowski, contesting the draft, stated:

Articles 458, 472, 473 and 474 [of the Criminal Procedure], relegating the responsibility of ministers, stipulated by Article 116 of the Constitution, towards the organization of the Sąd Sejmowy, deprive the homeland of this precious guarantee of national freedoms without which the most liberal law will be of no use as long as a minister is able to execute, without sanctions, what the ruler denied himself²¹¹.

During the same discussions, the deputies reminded ministers that they were a legally bound by executive power: «Article 16 of the Constitutional Charter, providing the freedom of the press [...] such law also, before which all in a free state, and firstly the ministers, should carry respect»²¹².

The shortcomings in the draft Criminal Procedure were not to be attributed to the King since «it is not the work of the highest Lord» and if, «in all representative countries, the State Council and ministers are the shield between the King and the nation, then, in our case, the King cannot be a shield between the nation and the State Council»²¹³.

But the opposition leader, Wincenty Niemojowski, offered calm: «the vain zeal will surely not carry away anyone from the representatives if the Council of the State remains within the saintly realm of the Constitution; and, if ministers are constitutional, the entire Chamber of Deputies will become ministerial»²¹⁴.

The result of this debate was overwhelming: out of 120 deputies who took part in the voting on the draft, there were 117 ballots (97.5%) against the project²¹⁵.

Further discussions took place during a monumental debate about the Organic Statute for the Senate, where the issue of ministerial responsibility became central to the entire question about accepting or rejecting the project. It is worth closely recreating the unfolding of this debate, possibly the most extensive in the entire history of the Kingdom of Poland from 1815 to 1830, which so far has not received scientific attention.

The starting point for this discussion was an axiom – as we can infer from the censored diary – that «a minister or other functionary, charged with a crime» should face the Sąd Sejmowy²¹⁶. In a departure from this, the deputies debated whether the proposed meaning of Article 157 concerning the Organic Statute was sufficient to uphold this principle. Here, it was observed that:

Two articles – 116 of the Constitution and 157 of the Organic Statute – are greatly contradict themselves” because of «the intermediary (role) of the State Council between the King and the nation»²¹⁷.

And:

The same speaker, Deputy Słubicki stressed that “such an intermediary contradicts the authority of the Chamber; since considering the understanding of constitutional power as composed of two bodies, i.e., from the King and the nation, the State Council, which is the council of the King, shall be necessarily considered to be lower than the nation; with respect to the dignity of the King and the nation, the State Council shall not be allowed to be an intermediary between the throne and the Chamber of Deputies²¹⁸”.

Already those stances, which opened the debate, signalled a very strong attempt to guarantee the accountability of ministers²¹⁹.

However, the debate was only to develop proceedings.

Deputy Kozłowski, discussing the current and proposed regulations concerning the responsibility of ministers, firstly stated that, currently, it was not clear how to proceed with the motion of the Chamber of Deputies, since «the speaker found in this respect no stipulation»²²⁰. He also considered «Article 157 of the Statute of National Representation to be fully inconsistent with the constitutional intent»²²¹. The deputy «did not agree that the proxy of the Council of the State in sending charges [to the King] was useful» and stressed that the literal interpretation of Article 116 of the Constitution explicitly distinguished between different powers, which separately embodied the right to charge ministers²²².

In the following part of this debate, Deputy Niemojowski stressed: «the responsibility of ministers is the surest guarantee of

national freedoms»²²³. Highlighting that «neither the King nor the nation, even less its representative» are allowed to infringe the Constitution²²⁴, he stressed that «The Chamber of Deputies has an equal right to charge them [ministers] in the Senate»²²⁵. He also rejected the intermediary of the State Council, stating that it «clearly contradicts Article 116 of the Constitutional Charter where you have no mention of any intermediary of the State Council»²²⁶. Similarly, other deputies clearly acknowledged that, «if there was no responsibility on the part of ministers, the system of our government would not be constitutional»²²⁷ and that «the responsibility of ministers not only defends the rights of the people, but is the strongest shield of the ruler, which protects its tranquillity and ensures its fame»²²⁸.

In fact, the core of the discussion soon transferred to the issue as to whether the wording of Article 157 of the Organic Statute on National Representation, to which the proposed new statute referred, was compatible with Article 116 of the Constitution²²⁹. What was behind this debate was the attempt to ensure the efficacious responsibility of ministers. The defending views mentioned that these were the only means by which «the Senate had a legally prescribed way, which leads to meting out justice in such major crimes»²³⁰, while «the biggest punishment [...] for ministers is their dismissal upon the request of the nation»²³¹.

On the other hand, a radically different view (that of Mr Ludwik Plater) states that the King should have the right to decide whether he wanted to put his minister on trial or not²³². At the same time, it had been underlined that «the current moment is

a moment when the people demand their freedoms, as set out in what we call the Constitution» and the Kingdom of Poland, recreated by the magnanimous Tsar, should «provide out of itself an example of moderation»²³³ coupled with admonitions: «Elsewhere, because it had been requested too much, the existing freedoms have been lost»²³⁴. The dangers also related to the proposed regulations were played down, e.g., Deputy Komorowski highlighted that the danger of abuse by the State Council was very limited, since Article 75 of the Constitution guaranteed an immediate start to the proceedings following accusations made about functionaries²³⁵.

To be explicit, however, contradictory views were recurrent. In the opinion of Deputy Wiszniewski: «the acceptance of the project would free ministers from responsibility» and «in countries where ministers are solely responsible to their monarch, their abuses and bad counselling are commonly not punished»²³⁶. In addition, commenting on the meaning of Article 116 of the Constitution, he stated that: «This article encompasses the most important prerogative of the nation since it protects it from the entire arbitrariness of administrative power»²³⁷.

Highly interesting in terms of the entire role of the Sąd Sejmowy was the statement that it was not only to judge high treason cases, but also «the infringements of higher functionaries and cases of breaches of the Constitution»²³⁸. This clearly shows the broad understanding of the concept of ministerial responsibility, while highlighting the fact that contemporaries were aware of the distinction that existed between its different types – what is little short of our contemporary perception. But not every-

one had such a realistic approach: «the fear of losing the responsibility of ministers is unfounded since a sensitive and caring monarch will not allow the infringements of higher functionaries to remain unpunished», vowed Deputy Wierzbowski²³⁹.

Finally, it became an issue as to whom could face criminal responsibility before the Sąd Sejmowy, and especially whether it also encompassed members of governmental commissions, as stated in Article 82 of the Constitution²⁴⁰.

After this heated debate by a narrow majority of eight deputies of this draft was rejected²⁴¹.

At the end of this historical Sejm in 1820, several petitions were made to the King. One of them appears interesting in light of the issue of ministerial responsibility, since it was postulated that «the decisions of the government were countersigned by the ministers themselves with the exception of counsellors of state, signing them as substitutes for ministers»²⁴².

Notably and much more interesting, the leader of the opposition, Deputy Niemojowski, pressed for ministerial responsibility, stating that:

[...] he makes an accusation and conveys it to the Sejm Marshall against Minister of Religious Affairs and Public Enlightenment Potocki, as well as Counsellor of State Staszic, for countersigning the administrative decisions from 22 May and 16 July 1819, putting under censorship firstly periodical writings and subsequently all works without exception²⁴³.

Such a motion caused, after a short discussion, that the Sejm Marshall, «after certain consideration»²⁴⁴, decided that the session of the Chamber was to be made secret²⁴⁵. Hence, we do not know how this motion was received and debated; none-

theless, it is certain that, in the end, it was rejected. Moreover, it is historically remarkable since it appears to have been a first attempt to make a minister accountable for his actions in Polish legal history. As we are about to see, it was not to be the last.

Such striving for ministerial responsibility returned 10 years later, when MPs managed to formulate motions aimed at making ministers legally accountable²⁴⁶. It is extremely valuable as we still have a record of such endeavours from 1830. These took place during the final gathering of the Polish Parliament before the outbreak of the 1830 November Uprising, i.e., in June 1830. Here, during the session of 27 June, there were five motions to put ministers and officials of the state on trial, namely: against Castellan Woźnicki, a counsellor of state in the Commission for Justice and General Marucy Hauke, Minister of Justice (both put forward by Deputy Ostrowski, but signed by Józef Świrski, a deputy from Hrubieszów); against the Minister of Religious Affairs and Public Education, Stanisław Grabowski (put forward by Deputy Roman Sołtyk from the Koniecki region); against the Minister of Treasury, Prince Drucki-Lubecki (put forward by Deputy Biernacki); and against members of the Committee of Persecution (put forward by Deputy Morawski)²⁴⁷.

As reasons for the first motion, directed against Woźnicki, the crimes specified in Articles 97 and 98, Paragraphs a and b, of the Criminal Code of 1818 were given, committed by countersigning the decision of the Administrative Council from 6 June 1828, which suspended the execution of a decision by the Sąd Sejmowy, which in

turn led to infringing the independence of the judiciary. As evidence supporting this motion, Świrnicki pointed to the decision of the Sąd Sejmowy, which was kept among the files of its proceedings and stored in the archive of the Senate²⁴⁸.

Here, it is worth analysing the debate that followed the motion²⁴⁹, which polarized the Chamber, such that the supporters and enemies of the motion were easily distinguished, with a large fraction of undecided deputies. The stances of all three parties merit some attention.

The opponents of putting the minister on trial used both legal and political types of argumentation. As for the latter type, they stressed that «the complaint, by reviving an old wound in the heart of the Lord, can bring more harm than good»²⁵⁰. This was a view that appeared to be shared by other deputies, who issued admonitions to the Chamber of Deputies for “moderation”²⁵¹. Yet it was the legal argumentation that was the most sophisticated and, for the most part, developed by the opponents of sending Woźnicki to the Sąd Sejmowy.

The cornerstone argument against sending Woźnicki to trial was that the authors of the motion did not provide any evidence, whereas, in the case of an accusation of a felony, such evidence was necessary²⁵² – an argument repeated by Ostrowski with reference to the wording of Article 157 of the Organic Statute, which required [at least] reference to the evidence. This led to a very heated debate between the Sejm Marshall and some of the deputies. While the Sejm Marshall demanded a signed decision from the Sąd Sejmowy to be presented²⁵³, this position was openly attacked by pointing to the fact that a person infringing the Constitution might easily prevent the

evidence from being made available²⁵⁴, that a basic accusation could be confronted with evidence in the process²⁵⁵ and that respecting this formal postulate would mean precluding the voting process, since such evidence could not be provided in the middle of the night, when this debate was taking place²⁵⁶. Even at the very last minute, this argument was invoked as a possible obstacle to voting²⁵⁷. Finally, such tactics on the part of the opponents of the motion were criticized as possibly hindering a vote, on the basis of «orchestrating a playing out of law» and «depriving the Chamber of an arbitrary conjecture of its unquestionable law of putting functionaries on a trial»²⁵⁸. For this reason, the proposal to conduct a double vote (the first concerning the formal request to obtain evidence and the second on the accusation itself) was played down²⁵⁹.

Apart from thus, there were also two noteworthy legal arguments: the counter-signed decision was illegal and therefore had no legal force and could have been ignored by the Senate²⁶⁰ – an argument contested by Deputy Michał Walewski, who stressed that the persons who were unlawfully incarcerated as a consequence of this decision could not ignore it²⁶¹.

Finally, an argumentative strategy concerning a possible mistake as to the law was put forward: Deputy Grąbaczewski referred himself to the fact that Castellan Woźnicki could not have known the respective legal regulation since there had never been a Sąd Sejmowy before²⁶².

On the other hand, the supporters of the motion strongly stressed the particular character of the transgression of Minister Woźnicki. His conduct, even though «we are used to seeing our laws breached by

ministers [sic!], was seen as particularly serious, since it encroached on the independence of the very Sąd Sejmowy»²⁶³.

The outcome of this heated debate was reflected in the results of the voting: there were 48 in favour of putting Woźnicki on trial, only two votes short of the necessary majority – the opposition gathered 51 ballots.

The next case concerning an accusation made by Deputy Biernacki from the Wielunski region was very extensive and referred to acts that had been committed back in 1822 (dissolving the Council of Kalisz), as well as in 1824 and 1828. The author of the charge meticulously pointed to breached constitutional regulations, such as the appropriation of legislative power by introducing state monopolies²⁶⁴.

In this case, however, the debate was not that emotional: the deputies almost unanimously stressed the vast merits of Prince Drucki-Lubecki, maybe thanks to a most remarkable opinion presented by Jan Jezierski: «It is easy to send a minister to Court and get rid of him, but it is not easy to replace him»²⁶⁵. The overall tone of the debate rather drifted in the direction of a great political evaluation of his person²⁶⁶, with only a few voices speaking of the essence of constitutional responsibility²⁶⁷.

The results of the voting proved to be a great victory for the prince, with only 12 votes calling for him to be put on trial.

A further accusation concerned Minister Grabowski as someone responsible for introducing preventive censorship. The motion, prepared by Deputy Sołtyk, stressed that: «Nobody, not even legislative power itself, can change the essential guarantees of the Constitution; such a guarantee is laid down by Article 16, establishing the freedom of the press»²⁶⁸. Here, the

debate – presumably because of time, with the proceedings having already stretched deep into the night – was very limited. The main argument against putting the minister on a trial was the lack of a causal link between the actions of Grabowski and the rise in censorship in the Kingdom. Possibly the clearest position in this respect was presented by Deputy Gustaw Małachowski, stating that «*Grabowski did not deprive us of the freedom of print, since we did not have it before the countersignature of the decision mentioned here [sic!]*»²⁶⁹. Even though other deputies stressed the fact that «guilt is always guilt» and «the minister should always conduct himself in a constitutional way»²⁷⁰, the outcome of the voting was decisive: 25 votes in favour and 59 against.

Following the result of this voting, the Sejm Marshall formally asked for permission to close the session. Upon this request, Deputy Ostrowski withdrew his motions. Having obtained the permission of the Chamber to finish the session, the complaint issued by Deputy Morawski from the Kaliski region «remained without a decision»²⁷¹.

Such was the end of the only mature attempts to make ministers accountable in front of the Parliament in the constitutional period of the Kingdom of Poland (1815-1830), which we can productively trace.

6. *The Russian understanding of the law and the Constitution in the Kingdom of Poland (1815-1830): between experiment and instrumentalism*

The above-mentioned approach of the Russian authorities to the Constitution of the Kingdom of Poland in the period 1815-1830

prompts some, albeit limited, considerations about the question of the overall Russian approach to the law.

The studies on the general understanding of the law in Russia, which could be different from that of Western Europe, are few in number²⁷². It is, however, difficult to deny that, since the Early Middle Ages, following the invasion of Mongol forces, who vandalized the divided and weak Russian princedoms²⁷³, there was a gradually increasing – and oriental in its style – perception of the absolute power of the sovereign Tsar. However, it is highly controversial as to what extent this authoritarianism differed from similar autocratic phases in Western Europe²⁷⁴. Yet it is incontrovertible that those authoritarian tendencies appear to have persevered at least partially until nowadays²⁷⁵.

From this point of view, the law is no limitation to the will of the absolute ruler, but can provide him with the best possible tool by which to organize society under his governance. This utterly instrumental attitude towards the legal system found numerous expressions throughout the Kingdom of Poland in the period 1815-1830. Already in August 1817, the Secretary of State of the Kingdom, residing in Saint Petersburg, in a letter sent to the King's representative (Namiestnik), unequivocally stated:

The Monarch does not consider the boons, with which he blessed the country, as irrevocable: he treats the institutions of the Kingdom as binding for the nation, but not for himself; in the contract granted to his subjects, he is a judge and a party; he will fulfil the obligations only as long as he, in his wisdom, will consider them as compatible with the good of the nation²⁷⁶.

Such a view is explicitly confirmed by the fact that Alexander I, after the abdica-

tion of his brother, Duke Constantin, was determined to annul the Constitution of the Kingdom and grant himself unalloyed freedom in 1822²⁷⁷. During the ensuing discussion between the highest officials in the Kingdom, their Russian counterparts and Tsar Alexander I himself, an idea to unilaterally suspend²⁷⁸ or modify the Constitution was considered²⁷⁹.

It is this very attitude that was the most significant rationale for the actual irresponsibility of ministers in the Kingdom of Poland. Being loyal to the Kingdom's supreme Russian supervisors, they did not have to fear adverse consequences from the Sejm, while public accountability could not take place as it had been subjected to extensive censorship.

While, on the hand, it might appear that this situation could have been different in the very beginning²⁸⁰, the views of those with the opportunity to get to know Tsar Alexander I Romanov more closely were unequivocal:

The ideas called liberal, i.e., great thoughts about general prosperity, the generosity of feelings, renouncing unlimited and arbitrary power in order to provide the future happiness of persons subjugated to his will, all this was a sincere concern of the Tsar. He occupied himself with it still, but it has been rather a youthful whim than the steadfast will of a mature man. The Tsar liked the forms of freedom just like one likes performances. He liked the presentations of free government and boasted about them. In fact, what he really wanted were forms and semblances; however, he did not want them to become reality. In a word – he would gladly agree that all were free but under the condition that everyone would freely execute his will²⁸¹.

This attitude is somewhat in line with the general approach to the law and legal tradition in Russia by stressing its distinctiveness and distance in relation to West-

ern ideas²⁸². On the other hand, there appears to have been an attempt to maintain at least a semblance of legal forms and the rule of law. It is symbolic for this attempt by the Russian authorities to make a sharp distinction between the official statements and the stances expressed in the unofficial, frequently secret, correspondence. Possibly the clearest example can be found in the case of the Polish Sejm in 1820. In a speech closing this session of the Sejm, the once notoriously liberal Russian Tsar stated: «[Tsar Alexander will], with the same constancy, with the same care, look after your good and my sole wish will be to see the order, which I granted to you, strengthened by your moderation»²⁸³. But, at the same time, he cautioned that «this severe responsibility» for not «accepting the ways of developing and asserting your national laws» will fall to the deputies²⁸⁴.

What was in fact meant here was to express the obvious discontent with the audacity of the Sejm representatives, who dared to reject two major drafts of legal statutes elaborated by the Russia-dependent authorities of the Kingdom, namely, the Criminal Procedure and the Organic Statute for the Senate²⁸⁵. Thus, being obviously displeased with the proceedings, Tsar Alexander did not convene the Sejm for the next five years²⁸⁶ and instead ruled the Kingdom of Poland with the help of Polish ministers on the State Council, who remained loyal and compliant to his will.

In such a way, the "Polish" experiment with Russian authorities proved to be a short-lived apparition, which was speedily replaced with the instrumental treatment of the law as a mere obstacle for the execution of the will of the Tsar within the Russian *Samoderzhavie*²⁸⁷.

Conclusions

The preceding considerations allow for a possibly interesting observation to be formulated concerning the issue of ministerial responsibility in the Polish context. Since the end of the 16th century²⁸⁸, the supreme judicial power in Poland belonged to the nobility, who were the subject of almost all sovereignty rights in the Polish Commonwealth²⁸⁹. Some of those judicial competences were exercised by the *Sąd Sejmowy*, a body embedded into the Polish Parliament. This regulation is not extraordinary within European constitutional history²⁹⁰.

The crucial feature of such a regulation is that constitutional responsibility is dependent on the current political situation, where the government, which also retains a parliamentary majority, is relatively protected from any kind of responsibility. In this sense, legal responsibility becomes political responsibility, which can also be exercised as legal responsibility. Here lies the decisive weakness of this mode of ministerial responsibility as well, which can be easily comprehended when the particular alterations to the very nature of parliamentary democracy in the course of previous centuries are considered.

To grasp those weaknesses, it is necessary to note the following transformations: while, in the 17th and 18th centuries, MPs were representatives of local communities of voters or local territories, with the rise of political parties, they were transformed into functionaries bound by the discipline of their respective group. The independence of deputies diminished significantly, limiting the capacity to exercise their control and judicial function over the Parliament. The number of cases of members of

a certain party who were sent to the special Parliamentary Court for a trial, on account of revolting against their government in order to punish the Prime Minister and his Cabinet whom they once supported, became so small that they were difficult to spot²⁹¹. With the spread of tacit consent that the parties that subsequently rose to power did not seek to enforce the legal responsibility of predecessors, considered as hardly anything more than revenge against previous governments, constitutional responsibility, while exercised with the consent of the Parliament, was gradually reduced to little more than a fictitious possibility.

This is especially clear in such countries as Poland. The restoration of the Polish state in 1815 led to a revival of the idea of a special Parliamentary Court, with competences regarding infringements of the Constitution and criminal acts on the part of ministers. This idea subsequently returned in the 1921 Polish Constitution²⁹², albeit in a substantially changed form, to be exercised by an independent tribunal²⁹³, and was even upheld by the authoritarian 1935 Constitution²⁹⁴. When the communist regime began to fall apart under the pressure of a deep economic recession in the 1980s, in order to channel social discontent during martial law, a motion was presented by the Military Council for National Salvation²⁹⁵ to the Polish Parliament to create a State Tribunal to «hold persons responsible for plunging the country into a deep crisis accountable»²⁹⁶, with respective legislation, together with constitutional amendments, accepted on 26 March 1982²⁹⁷. Since then, this model has remained unchanged irrespective of the democratization processes²⁹⁸, uniting, in a single judicial body, two functions: exercising constitutional liabil-

ity and functioning as a criminal court for the President and ministers²⁹⁹.

Yet it would be too much to claim that, in states where the responsibility of ministers is not exercised independently from the Parliament, there is no accountability whatsoever. Even in modern Polish constitutional history, there have been several cases of politicians being accused and held constitutionally accountable, with two sentences being handed out³⁰⁰. However, this Parliamentary Court has proven to be dramatically ineffective during instances of grave and blatant infringements of the Constitution by the Law and Justice government since 2015.

That said, nowadays, this accountability has been overtaken by the mass media, social media and the Internet, which can pressurize a certain minister or other state functionary to resign from his or her post³⁰¹. This substitute, even though it has so far managed to preserve the essence of the democratic answerability of the executive for infringements of the Constitution, is definitely deprived of any more basic guarantees, such as the right to a fair trial and freedom of the press, what cannot be taken for granted in many countries. The ongoing public debate, fuelled by simplified and frequently distorted information from the fourth estate, cannot be deemed to be a truly veritable replacement for a professional judicial body. Consequently, it remains to be stressed – in line with the aim of the entire ReConFort project – that, in a possible future Constitution of the European Union, the issue of ministerial responsibility should not be relegated to an extraordinary court, which is dependent on the European Parliament. Otherwise, this will simply result in a non-existent

controlling mechanism, which is unable to reveal infringements on the part of ministers, meaning that the only remaining hope would be scrutiny of the media, which can be subjective and prone to abuse.

- ¹ Cfr. D. Slijkerman, *Ministerial Responsibility as a Safety Valve for the Constitutional Powers in Great Britain from the Seventeenth Century Onwards*, «Journal of Constitutional History», 31, 2016, pp. 223-249; W. Studnicki, *Konstytucja Rosyjska i Prawno-państwowe stanowisko Królestwa Polskiego*, Warszawa 1906, p. 19, where the author rightly states: «The issue of the ministerial responsibility is a basic issue of political governments [...] The fight of Parliament with the Ministers was a natural stage in the development of Parliamentarism of many countries».
- ² Slijkerman, *Ministerial Responsibility* cit., p. 231, rightly points out that: «In 1782 Lord North's ministry was overthrown by the House of Commons because of Britain's defeat in the American War of Independence. Thus, a landmark was achieved, this being the first cabinet in the world to be forced out of office by a motion of no confidence».
- ³ What resulted in a prolific scientific literature of the subject, cfr. e.g. J.K. Immanuel Buddeus, *Die Ministerverantwortlichkeit in constitutionellen Monarchien*, Leipzig 1833; F. Bülow, *Der constitutionelle Staat in England, Frankreich und Deutschland*, in *Neue Jahrbücher der Geschichte und Politik* 1843, vol. 1, pp. 1-45; R. Mohl, *Die Verantwortlichkeit der Minister in Einheitsstaaten mit Volksvertretung: rechtlich, politisch und geschichtlich entwickelt*, Tübingen 1837.
- ⁴ It is worth stressing that in the Polish legal literature until now there is no complex study upon the ministerial responsibility, there are only some studies which refer to some particular issues related with ministerial responsibility in the light of the regulations actually in force, cfr. Z. Szeliga, *Odpowiedzialność parlamentarystów, Prezydenta, Rady Ministrów oraz jej członków w świetle Konstytucji RP z 2 kwietnia 1997 roku*, Ministrów w Konstytucji RP z 2 kwietnia 1997

- r., R. Mojak, *Prawnoustrojowa instytucjonalizacja odpowiedzialności politycznej ministrów przed Prezesem Rady* [w:] *Prawa człowieka – społeczeństwo obywatelskie – państwo demokratyczne*, red. P. Tuleja, M. Florczak-Wątor, S. Kubas, Warszawa 2010, *Dziemidok-Olszewska, Bożena*, *Odpowiedzialność głowy państwa i rządu we współczesnych państwach europejskich*, Lublin 2012, *Juchniewicz, Joanna*, *Odpowiedzialność polityczna ministrów – konieczność czy polityczne awanturnictwo?*, *Przegląd Prawa Konstytucyjnego* 2016, n. 5 [33], *Ciżyńska, Monika*, *Odpowiedzialność konstytucyjna członków Rady Ministrów: kwestie wybrane*, Płock 2017. Also in the older literature, concerning e.g. the Duchy of Warsaw there are no clear definitions of the position of the Ministers, cfr. A. Rembowski, *Z życia konstytucyjnego w księstwie warszawskim. Studium historyczno-polityczne*, Warszawa 1905.
- ⁵ What according to H. Skrzeczyńska occurred in XIV century, cfr. H. Skrzeczyńska, *Geneza i ewolucja urzędu ministra w polskim systemie ustrojowym do uchwalenia Konstytucji RP z 1997 r.*, *Przegląd Prawa Konstytucyjnego* 2014 (6), p. 86. Similar approach has Z. Głoger, *Encyklopedia Staropolska Ilustrowana*, t. III, Warszawa 1902, p. 277.
- ⁶ Such a list has been elaborated by Skrzeczyńska, *Geneza i ewolucja urzędu ministra* cit., pp. 83-84. Nowadays, the definitions of the term Minister vary. For instance for the British law, the Ministers of the Crown Act 1975 offers a definition that «Minister of the Crown means the holder of an office in Her Majesty's Government in the United Kingdom and includes the Treasury, the Board of Trade and the Defence Council», quoted after, *Brazier, Rodney*, *Ministers of the Crown*, Oxford 1997, p. 23.
- ⁷ Skrzeczyńska, in her paper [at p. 113] claims this definition to be valid for the entire period of the

Constitutionalism since the enactment of the Constitution of 3rd May 1791. Suffice it to say however that during the communist period in Poland (1944-1989) until the year 1982 there were no regulations which could ensure any constitutional responsibility of the ministers, what also realises Skrzeczyńska herself. Ivi, p. 108.

- ⁸ Art. 77 of the 1815 Constitution. This and all the subsequent quotations of the regulations of the Constitution of Poland 1815 will be made according to the English translation of this legal act published as: *Constitutional charter of the Kingdom of Poland in the year 1815*, London 1831 and will be simply referred to as "the Constitution".
- ⁹ Art. 81 of the Constitution.
- ¹⁰ I.e. to announce to him «the establishment of the regency in Russia», cf. art. 49 of the Constitution.
- ¹¹ The first person to become a ministry of State was Ignacy Sobolewski, who was in functions since 16 XI 1815 until 12 IV 1825 and was superseded by Stefan Grabowski, who was in this capacity far beyond the outbreak of the 1830 November Uprising, until the year 1839.
- ¹² In the Polish language version of the Constitution called also "Minister secretary of State".
- ¹³ Together with "all other functionaries", cfr. art. 41 of the Constitution. It is essential to mention however that two candidates for the function of the Minister were presented to the Russian tsar by his representative in the Kingdom (Namiestnik), (cfr. art. 69 of the Constitution, which stated: «The lieutenant shall present to the king, [conformably to the detailed arrangements on the subject] two candidates for every vacancy of an archbishop, bishop, senator, minister, supreme judge, counsellor of state or master of requests»), out of whom he was supposed to select his favourite.
- ¹⁴ Cfr. art. 47 of the Constitution.

- ¹⁵ Cfr. Art. 76 of the Constitution.
- ¹⁶ Art. 76 of the Constitution. It is worth stressing, that irrespectively of certain differences which existed between those commissions as far as their internal organisation is concerned, I support the conclusion of H. Izdebski, (cfr. Id., *Kolegialność w Komisjach Rządowych Królestwa Polskiego w latach 1815-1830*, «Czasopismo Prawno-Historyczne» 1971, z. 1, p. 86) that they were based on the "collective model".
- ¹⁷ This was clearly stipulated for three of the given commissions, namely for that of the interior, of war and of finances – where there were to be «counsellors of the state – general directors», cfr. art. 80 of the Constitution.
- ¹⁸ Art. 63 of the Constitution.
- ¹⁹ During the 11 years of his reigns in the Kingdom of Poland, Alexander I Romanov officially purposefully visited Warsaw barely 9 times.
- ²⁰ Art. 64.
- ²¹ Art. 65.
- ²² Art. 66.
- ²³ Constitution in its art. 68 explicitly stated that such a countersignature was a perquisite for them entering into force.
- ²⁴ Statuty organiczne were extensive laws specifying the functioning of certain public institutions, such as ministries or the Sejm – the Polish Parliament. For a meticulous analysis of those regulations cfr. Izdebski, *Kolegialność w Komisjach Rządowych Królestwa Polskiego w latach* cit., pp. 80-100.
- ²⁵ As for example in the Commission for Justice, cfr. art. 3 of Statut Komisyyów Rządowych, 17 października 1816 r., in *Zbiór przepisów Administracyjnych Królestwa Polskiego. Wydział Sprawiedliwości*, vol. 2, Warszawa 1866, p. 153.
- ²⁶ There are also further terms used in this context, especially "answerability". Cfr. O. Dawn, *Ministerial Accountability: What and Where are the Parameters?*, in D. Butler, V. Bogdanor, R. Summers (ed. by), *The Law, Politics, and the Constitution: Essays In Honour of Geoffrey Marshall*, Oxford 2004, p. 78, but they do not appear to have any more specific meaning.
- ²⁷ Ivi, p. 88.
- ²⁸ See in depth on this issue G. Marshall, *Constitutional Conventions: The Rules and Forms of Political Accountability*, Oxford 1984, p. 77 et ss., quoted after Dawn, *Ministerial Accountability* cit., pp. 78-79.
- ²⁹ Ivi, p. 79. Following this division some more specific subdivisions were also put forward, such as «informatory aspect of the explanatory accountability», ivi, p. 83.
- ³⁰ I. Ward, *The English Constitution: Myths and Realities*, Oxford, Portland and Oregon 2004, pp. 69-70.
- ³¹ That is e.g. the case under the current legislation in Poland, cfr. Juchiewicz, *Odpowiedzialność polityczna ministrów* cit., pp. 39-52, especially p. 50.
- ³² N. Quirk, *Accountable to Everyone: Postmodern Pressures on Public Managers*, «Public Administration» 1997 (75), p. 569, quoted after: Dawn, *Ministerial Accountability* cit., p. 87.
- ³³ Still in 1813 the General Council of Confederation in the Duchy of Warsaw called for a widespread mobilization of the "levee en masse" against the Russian forces, cfr. J. Czuby, *The Duchy of Warsaw, 1807-1815: A Napoleonic Outpost in Central Europe*, New York 2016, p. 181.
- ³⁴ It is worth reminding a fact that was explicitly brought to attention by Studnicki, already in the year 1906, in "Konstytucja Rosyjska i Prawno-państwowe stanowisko Królestwa Polskiego" p. 43 namely that «Governmental commissions of the Kingdom or its ministries were not dependent on the Russian Ministries, were not subject to their control, so they were totally equal to them».
- ³⁵ For the more detailed reflections upon the origins of the Kingdom of Poland cfr. S. Akenazy, *Rosja-Polska 1815-1830, Lwów-Warszawa 1907*, Izdebski, *Litewskie projekty konstytucyjne z lat 1811-1812 i ich wpływ na Konstytucję Królestwa Polskiego*, *Czasopismo Prawno-Historyczne* 1 [1972], pp. 93-135, S. Smolka, *Polityka Lubeckiego przed powstaniem listopadowym*, Kraków 1907, vol. II (quoted subsequently: Id., *Polityka* cit., vol. II) as well as my paper: *The codification of the substantial criminal in Poland law in the light of debate on the Sejm in the year 1818*, in Ulrike Müßig [ed. by], *Reconsidering Constitutional Formation II Precedence of the Constitution. A Comparative Analysis of the Juridification by Constitution*, s.l., pp. 173-209.
- ³⁶ Cfr. M. Roztworowski, *Rada Ministrów I Rada Stanu Księstwa Warszawskiego*, Kraków 1911, p. 4, who writes about the «fruits of the gathered experience, which will be reaped by the Congress Kingdom of Poland».
- ³⁷ Izdebski, *Litewskie projekty konstytucyjne* cit., pp. 93-135.
- ³⁸ As for the details concerning this project, cfr. M. Byczyk, *The codification of the substantial criminal in Poland* cit.
- ³⁹ NA, NA, *Ustawa Rządowa Wielkiego Księstwa Litewskiego*, 13078, A5, The Princes Czartoryski Library in Cracow, source number 13078 A5, retrieved by the author and placed online in the database of the ReConFort project. Since the beginning of 2017 The Princes Czartoryski Library in Cracow constitutes part of the National Museum in Cracow.
- ⁴⁰ If not specified differently, the translations from the Polish literature and sources have been conducted by the author himself. Only where an already existing translation was available, as it was the case for the Polish 1815 Constitution, it has been used.
- ⁴¹ The Duke of the Grand Duchy of Lithuania was the title for a prince presiding over this territory.
- ⁴² According to the very wording of this statute it was impossible for the Sejm or Senate to bring Minister to accountability on its own, what clearly revealed their

very limited position within the projected power structures. However, the idea of overviews of the activities of a Minister in the last two years was subsequently upheld in the Constitution of the 1815 Kingdom of Poland.

⁴³ Such a solution appears obviously to be far from being perfect, especially in the light of the fact that it could be the minister of justice himself who was culpable.

⁴⁴ Being possibly comparable with the functions of the British Parliament as the Court of the first instance for the Lords following idea of *judicium parium*, cf. in this respect: E.W. Ridges, *Constitutional law of England*, pp. 192-193, London 1905, who describes the first case which as tried before the British Parliament: «the first real instance occurring in 1376» (*ibidem*).

⁴⁵ A. Lityński, *O Trybunale Koronnym i palestrze trybunalskiej*, Palestra 1978, vol. 10, p. 26, Akta Sejmikowe województwa krakowskiego, ed. Kutrzeba, Stanisław, Przyboś, Adam, vol. IV, Wrocław 1963, p. 169.

⁴⁶ Cfr. Z. Szcząska, *Sąd sejmowy w Polsce od końca XVI do końca XVIII w.*, CzP-H XX, 1968, z. 1, p. 99.

⁴⁷ By the law "Ustanowienie Sądów Sejmowych" (the creation of Sądy Sejmowe), Volumina legum, vol. VIII, p. 82, cfr. Also Szcząska, *Sąd Sejmowy w okresie rządów Rady Nieustającej. Proces barona Juliusa*, Przegląd Historyczny 1971, iss. 3, p. 421.

⁴⁸ W. Konopczyński, *Geneza i ustanowienie Rady Nieustającej*, Krakow 1917, s. 356 who wrote: «Indeed, the Constitution did foresee for it [e.g. for Rada Nieustająca] only one form of responsibility – criminal, in front of the Sejm Court, similarly to impeachment, and this solely for the abuse of power and not for negligence, inactivity, disclosing secrets or similar infringements».

⁴⁹ Volumina legum, vol. VIII, p. 82, the law "Ustanowienie Sądów Sejmowych" (the creation of Sądy

Sejmowe).

⁵⁰ It is worth highlighting that according to the regulation of art. 215 of the draft, Sąd Sejmowy was composed of 6 senators, 15 members of the Parliament from the nobility as well as 6 deputies. Bearing in mind that quorum was reached with 15 persons (art. 216), the unquestionable supremacy of the nobility was warranted.

⁵¹ Szcząska, *Sąd Sejmowy w okresie rządów Rady Nieustającej*. Proces barona Juliusa, Przegląd Historyczny 1971, iss. 62/3, p. 426. It has to be admitted that the Constitution of 3rd May was not very explicit on this issue: in Article VIII, section 6 of the Constitution it has been stated that: «[...] there shall be a supreme court, called a Sejm Court, to which persons shall be elected at the opening of every Sejm».

⁵² A. Horodyski, *The Princes Czartoryski Library*, source number: 5261 V, pp. 219-292. This project has been supposedly completed on 21. September 1814, cfr. M. Kallas, *Zapomniany projekt konstytucji polskiej z 1814 roku*, Zeszyty Naukowe UMK, Prawo IX (1969), p. 105.

⁵³ The details of proceedings in this respect were to be «laid down in a separate law». Such a role of Senate is consistent with the proclamation that Senate was responsible for the inviolability of the "constitutional act" (cfr. section 33, Chapter VII). Consequently, also in the case of this project there is a clearly defined role of the Senate as being also an extrajudicial court.

⁵⁴ In original: «Rada Wielka».

⁵⁵ It had been stated that the task of Great Council i.e. was to: «counsel and decide in all those matters that the King with his special orders will point to and commend» (cfr. section 8, Chapter VIII).

⁵⁶ Such a conclusion however should be supplemented with the explanation that the project retrieved by the author of this text from

The Princes Czartoryskich Library (National Museum in Cracow) does not contain Chapter 9, which according to Marian Kallas who had based himself upon the [much less legible] draft stored in PAU and PAN archive in Cracow (Manuscript number 152, currently available as: microfilm number 152, page 138-139) was entitled «On the highest Council. About the ministers i.e. the functionaries in the highest guard» (in original: «O Straży Najwyższej. O Ministrach czyli Urzędnikach Straży Najwyższej»).

⁵⁷ It was stipulated barely that a sanction of the king was necessary for a law to enter into force (cfr. section 11, Chapter VI; section 7, Chapter VII).

⁵⁸ Kallas, *Zapomniany projekt konstytucji polskiej* cit., p. 106. This author also points out that the project on many places has been directly inspired by the remarks of Hugo Kołłątaj upon the Constitution of Duchy of Warsaw from the year 1809, cfr. *ibid.*, p. 111.

⁵⁹ I provide this information according to Izdebski, *Litewskie projekty konstytucyjne* cit., pp. 123-124.

⁶⁰ Cfr. art. 138.

⁶¹ Cfr. artt. 139, 141, 143.

⁶² Art. 231.

⁶³ Cfr. art. 145 of the draft.

⁶⁴ Which in its article VII stated that: «Desiring that the Guardians of the National Laws be bound to strict accountability to the nation for any and all their misdeeds, we determine that, when ministers be charged with breach of law by a deputation designated to examine their deeds, they shall answer in their own persons and property. In any such impeachments, the assembled estates shall by simple majority vote of the conjoint Chambers send the inculpated ministers to sejm courts for their just punishment equaling the crime or, their innocence being demonstrated, their release from proceedings and punishment» (English translation of the Con-

stitution provided by <https://en.wikisource.org/wiki/Constitution_of_May_3,_1791>, last accessed 31.08.2017).

⁶⁵ In English translation the name "The high national Court" is used here, which, being very informative, does not fully convey the idea of it being closely related with Parliament. Also the word "answerable" does not seem to be fitting into the distinction made in this article.

⁶⁶ The competence to decide about putting such persons on trial was reserved for Senate, cf. art. 116 of the Constitution. This regulation was further supplemented by a more general regulation of art. 30 of the Constitution, which stated: «All public officers in the executive part of the administration are liable to be displaced by the same authority by which they were appointed; and all, without exception, are responsible for their conduct».

⁶⁷ According to this stipulation: «Sąd Sejmowy shall take cognizance of crimes against the State and of offences committed by the great officers of the kingdom after the senate has decreed the trial by Art. 116. Sąd Sejmowy is composed of all the members of the senate».

⁶⁸ Cfr. art. Statut organiczny o reprezentacji narodowej, article 157, «Dziennik Praw Królestwa Polskiego», vol. I, pp. 344-345, publication available in the internet database: <<http://pbc.biaman.pl/dlibra/docmetadata?id=4231&from=publication>>, last accessed: 16.10.2017. Those regulations were complemented by the organic statutes for the respective ministries, but hardly any more specific regulations could be found. For instance in the Commission of Justice the minister was to be held responsible for «lack of diligence and procrastination», Cfr. Zbiór przepisów Administracyjnych Królestwa Polskiego, Warszawa 1866, vol. I: Organizacja Komisji Rządowej

Sprawiedliwości, p. 167, quoted in accordance with W. Witkowski, *Uwagi o urzędzie ministra sprawiedliwości w Królestwie Polskim [1815-1876]*, Acta UW. Prawo 2010 nr 311, pp. 262-263.

⁶⁹ Ivi, p. 263 and Izdebski, *Kolegialność w Komisjach* cit., p. 121 consider that such a solution, «being typical for the limited monarchy» meant that a minister could not face a trial without the consent of the king. Yet the wording of the statute is not clear here, since art. 157 states that: The Chamber will subsequently deliberate whether those complaints are to be sent by it to the King by Council of the State, for putting the accused on a trial according to art. 116, 152 of the Constitutional law. Cfr. *Dziennik Praw Królestwa Polskiego* 1816, vol. I, n. 5, p. 344. There was also no formal procedure by which king could lift or disobey such complaint.

⁷⁰ Cfr. e.g. H. Dylągowa, *Towarzystwo Patriotyczne i Sąd Sejmowy 1821-1829*, Warszawa 1970, P. Żywiecki, *Proces przed Sądem Sejmowym w latach 1827-1828 z punktu widzenia konstytucyjnych i kodeksowych zasad prawa karnego*, in *System polityczny, prawo i konstytucja Królestwa Polskiego 1815-1830. W przededniu dwusetnej rocznicy powstania unii rosyjsko-polskiej*, ed. Mażewski, Lech, Radzymin 2013, pp. 223-253.

⁷¹ What will be discussed in detail below.

⁷² Such an idea seems to go back to the report of Novosiztoff to tsar from 3.5.1822, where he suggested limiting the freedom of the Sejm's proceedings by elaborating certain internal order of proceedings. Alexander seems to have prepared such a draft himself, printed in *Russkaja Starina* 1882, II, p. 256 et seq, issue title: *Rossija i Polska*. I provide all that information according to R. Przelaskowski, *Sejm warszawski roku 1825*, Warszawa 1929, pp. 80-81.

⁷³ Żywiecki, *Proces przed Sądem Sejmowym w latach 1827* cit., p. 230.

Cfr. also considerations below. An incomplete copy [with the missing first four pages, containing articles 1-22], of those rules has been retrieved by the author from The Princes Czartoryskich Library – National Museum in Cracow [source number 5252, pp. 79-88] and is the base of the subsequent considerations.

⁷⁴ The formal reason for accepting those proceedings was art. 51 of the Organic Statute for Senate, which stated that the mode of the proceedings of the Sejm Court shall be «laid down in a separate instrument» (cfr. *Dziennik Praw Królestwa Polskiego*, vol. II, pp. 289-290: «Sposób postępowania Sądowemu w osobnem urządzeniu przepisaniem będzie»). However Prince Drucki-Lubecki, proposed the tsar to follow the ordinary Prussian Procedure which was still used in the Kingdom of Poland, cfr. Smolka, *Korespondencja...*, vol. IV p. 131. Finally the application of the Prussian laws was accepted on the subsidiary basis) cfr. art. 91 of the Project]. Irrespectively of rejecting the project of the criminal procedure in the year 1820, there were in force Prussian laws, which constituted a base for the criminal proceedings in Poland. Yet as the close scrutiny of those rules will reveal, those regulations were only amending the existing procedural rules and not offering a completely self-sufficient system of criminal codification.

⁷⁵ Prince Drucki-Lubecki, discontented with the conduct of the Administrative Council, finally sent a separate project to tsar Nicholas I Romanov, cf. the protocole of the Administrative Council (Meeting number DCCXLIII on 20-22 March 1827, PAN and PAU Archive, source number 2319, vol. 5, pp. 94-102 which was made available in the internet database of the ReConFort project, available under: <www.sources.reconfort.eu>). For this narration please refer to Smolka, *Korespondencja...*

cit., pp. 127-142 on whom I relied, even if I also did manage to find the protocole of the Administrative Council (Meeting number DCCLI on 9 April March 1827, PAN and PAU Archive, source number 2319, vol. 5, pp. 122-123, made available in the internet database of the project, available under: <www.sources.reconfort.eu>). This protocole contains an ample analysis of this draft, which led to rejecting it. Also the text of this project has been scanned and made available in the Internet database of the ReConFort Project, available under: <www.sources.reconfort.eu>.

⁷⁶ It is important to highlight that such Delegation was established even though previously the evidence had been gathered in a totally unconstitutional way by the "Committee for Investigation" ("Komitet Śledczy"), cfr. Dylągowa, *Towarzystwo Patriotyczne* cit., pp. 287 ss.

⁷⁷ Ivi, p. 261.

⁷⁸ Ivi, p. 273 and the sources quoted there.

⁷⁹ According to art. 47 of the draft: «After presenting the above report of the Delegation, the acts of the accusation will be presented to the Court together with proofs and register».

⁸⁰ Art. 68.

⁸¹ The Criminal Code of 1818 did know three basic penalties, i.e. the death penalty as well as heavy and light prison [cf. art. 5 of the Criminal Code 1818], cf. *Kodex karzący dla Królestwa Polskiego: z dodaniem praw kryminalnych później uchwalonych, rejestru porządkowego i alfabetycznego, przypisków wskazujących artykuły związek z sobą mające*, Warszawa 1830; this issue is also freely available in the Internet under: <<http://ebuw.uw.edu.pl/dlibra/docmetadata?id=210>>, last accessed: 25.10.2017.

⁸² This very pressure can be already recognized in the very fact that Sąd Sejmowy was established by the Russian tsar and not following

the motion of the Senate. The key role for ensuring the independence of the Sejm Court had to be attributed to the position of its president, senator Piotr Biełiński, who maintained as big independence from Russian authorities as possible, nominating as the members of the Delegation of the Court, responsible for collecting evidence, different persons than Novositzoff and Grand Duke Constantin wanted and respected a very strong discipline during the proceedings (cfr. Dylągowa, *Towarzystwo Patriotyczne* cit., pp. 306, 322).

⁸³ The very charge against the 8 accused was that they belonged to a secret organization whose aim was to restore independence of Poland in such borders as it had been before the second partition; cfr. Bieczyński (ed. by), *Sąd Sejmowy* cit., pp. 14-50.

⁸⁴ The verdict of Sąd Sejmowy was published during the November Uprising as "Wyrok Sądu Seymowego Królestwa Polskiego", Warszawa 1831.

⁸⁵ For the collection of sources on this issue see the publication of the materials concerning the Sejm Court, Bieczyński (ed. by), *Sąd Sejmowy* cit., pp. 280-288. The final publication of the judgment took place on 17th March 1829.

⁸⁶ Dylągowa, *Towarzystwo Patriotyczne* cit., pp. 307-308.

⁸⁷ Cfr. secret letter of Duke Constantin to tsar Nicolai I from 24 VI 1828, quoted in *ivi*, p. 313, where Dylągowa wrote: «Soit complicité ou erreur de la part de la Haute Cour, je pense que dans aucun cas, il n'appartiendrait à VMI et R de confirmer la sentence du Sénat, qui repose évidemment sur une doctrine condamnable».

⁸⁸ It has been reprinted for the first time by Smolka, where Minister Drucki-Lubecki wrote: «[...] ce serait un miracle qu'un arrêt équitable, ou il ne saurait être obtenu que si les juges n'avaient aucun égard aux lois existantes

(Smolka, *Korespondencja... cit.*, pp. 273-278, in part. p. 277). Owing to the great historical research by this author we also have access to an anonymous opinion (Id., *Polityka* cit., pp. 246-254 and Id., *Korespondencja* cit., p. 289) attributed to Biełiński, the President of the Sąd Sejmowy containing a fierce defence of the judgment of the Sąd Sejmowy.

⁸⁹ I narrate those events according to the statements in *ivi*, pp. 284-306.

⁹⁰ The decision from 8th March 1829, cfr. "Sąd Sejmowy 1827-1829 na przestępców Stanu. Urzędowe Akta", Poznań 1873, p. 283.

⁹¹ Cfr. Dylągowa, *Towarzystwo Patriotyczne* cit., p. 319.

⁹² For the final opinion of the Administrative Council upon this opinion cfr. B.K.A. Hoffman, *Coup d'oeil sur l'état politique du Royaume de Pologne sous la domination russe 1815-30. Par un Polonais*, Paris 1832, pp. 318-323.

⁹³ Dylągowa, *Towarzystwo Patriotyczne* cit., pp. 310-318. Very characteristic is a statement made by Dylągowa [*ivi*, p. 324] that: «The Sejm Court played in the Polish history almost such a role as the Great Sejm – it prepared psychologically the society of the Kingdom for a fight for a truly free and independent Poland». Also the contemporaries such as Prot Lelewel in his memoirs, (Id., *Pamiętniki i dziennik domu naszego*, ed. Lelewel-Friemannowa, Irena Wrocław-Warszawa-Kraków 1966), considered the punishment of «senators for their independent opinion, for not finding guilt, as it was required by the power» to be one of the main reasons of the November Uprising [*ivi*, p. 329: «Sądu Sejmowego wyrok – jak osądzony przez monarchę? Pod sądni wbrew wyrokowi dowolnie karani, senatorowie za ich niepodległe zdanie, za nieuznawanie winy, jak tego władza żądała, politycznie przez rok cały więzieni»).

⁹⁴ Which, as it has to be highlight-

- ed here, was to a great extent a mere translation of the Austrian Criminal Code of 1803, cfr. the statement of Hube, «book I and II of the Code 1818 was in its greater part transformed into a simple translation of its original» [cfr. R. Hube, *Studia nad Kodeksem karnym 1818 r. Cz. I*, Warszawa 1863, pp. 20-21].
- ⁹⁵ Art. 98 of the 1818 Criminal Code.
- ⁹⁶ Two further instances of the crime of abuse of power (letters C and F) were related with the misconduct of the judges and solicitors. For all those crimes a penalty of a heavy imprisonment (3-10 years) was stipulated. It is worth highlighting that those regulations had the most direct relevance as the extension of the constitutional regulations. As such extensions there hardly can be considered statutes creating simple crimes, like bribes (cfr. articles 311 and 312 of the 1818 Criminal Code).
- ⁹⁷ It is a statement that stems from a theoretical analysis and is not based on the analysis of the judicial practice, since there were no cases of the criminal ministerial responsibility in the years 1815-1830. Also the interpretation of the term "wickedness" remains a mystery to a contemporary researcher since the case law of courts in the Kingdom of Poland and especially of the Supreme Court, was irretrievably lost during the II World War.
- ⁹⁸ What had its expression in art. 157 of the organic statute, including the king in the process of the accountability of the ministers. This regulation shall be discussed more thoroughly below.
- ⁹⁹ By the fact that it was the king who was responsible for convening the Sejm.
- ¹⁰⁰ Which, as it has to be reminded stated that: «The heads of departments and the members of government commissions are answerable to the Sąd Sejmowy for every infraction of the Constitutional Charter and the royal decrees of which they may have been guilty». The competence to put such persons on trial was restricted for Senate, cfr. art. 116 of the Constitution.
- ¹⁰¹ Statut Organiczny o Senacie z dnia 7/19 listopada 1816 r., "Dziennik Praw Królestwa Polskiego", vol. II, nr 10, pp. 269-290.
- ¹⁰² According to the best knowledge of the author of this text.
- ¹⁰³ Statut organiczny o reprezentacji narodowej, article 157, "Dziennik Praw Królestwa Polskiego", vol. I, pp. 344-345, publication available in the internet database: <http://pbc.biaman.pl/dlibra/docmetadata?id=4231&from=publication>, last accessed: 9.9.2018.
- ¹⁰⁴ Statut organiczny o reprezentacji narodowej, article 157, "Dziennik Praw Królestwa Polskiego", vol. I, pp. 344-345.
- ¹⁰⁵ Cfr. Witkowski, *Uwagi o urządzie ministra* cit., p. 263, who commenting upon the meaning of art. 82 of the Constitution, stated: «It was a responsibility of a constitutional character».
- ¹⁰⁶ It was the king who was responsible for nominating such persons following the article 69 of the 1815 Constitution.
- ¹⁰⁷ Statut organiczny komisji rządowych z 5/17 X 1816 r., quoted in *ibidem*, the source available in original in AGAD, Centralne Władze Oświatowe Księstwa Warszawskiego i Królestwa Polskiego, Fonds 231, signature 15, p. 70.
- ¹⁰⁸ Such meetings – in case of the tsar Alexander I took place each Tuesday and precisely then the letters of prince Drucki-Lubecki, written "ad visum Imperatoris" were presented, cfr. Smolka [ed. by], Introduction to *Korespondencja Lubeckiego z Ministrami Sekretarzami Stanu Ignacym Sobolewskim i Stefanem Grabowskim*", vol. I, Kraków 1909, pp. LI-LIII, quoted subsequently as Smolka, *Korespondencja...*, vol. I]. This happened even in the time – when, as Smolka rightly pointed out – the Russian tsar almost never met personally with his Russian Ministers anymore. This privilege ceased during the time of the disgrace of Lubecki – starting on 13th October 1829, cf. letter from Turkułł dated on 14.10.1829, cfr. Smolka, *Korespondencja...*, vol. III, p. 341, with the statement: «J'ai lu à Sa Majesté les lettres que V. E. m'a fait l'honneur de m'adresser le 25 septembre et le 3 de ce mois. Quelques unes expressions ont paru à l'Empereur et Roi un peu fortes. A cette occasion Sa Majesté m'a dit qu'Elle n'avait jamais approuvé cette correspondance demi-officielle [...]». On the other hand, the incessant attempts of the Russians in the Kingdom of Poland, and especially Duke Constantin and Senator Novositssoff to subjugate the Polish authorities did not prove to be effective. It remains an exceptional statement quoted in the notes of Piotr Bieliński, reprinted by Smolka, *Korespondencja...* IV, pp. 218-227 stemming from an alleged letter to P. Bieliński from 16.10.1828 that: «Lord orders once for all that the will of the brother of tsar, manifested to him, is to be treated as if it were an order of the Monarch itself, be it that this will reached him only orally, and not in writing», quoted in *ivi*, p. 222. According to S. Askenazy, *Dwie Rozmowy w Belwederze*, Biblioteka Warszawska, t. II, Warszawa, pp. 18-19, such a power was conveyed to Duke Constantin already in the year 1820, when tsar Alexander was to have said that he has: «carte blanche [...] I take Constitution on myself».
- ¹⁰⁹ As failing into disgrace by Prince Lubecki since June 1828 exemplifies.
- ¹¹⁰ Like for example in the letters form 2.01.1822 (Smolka, *Korespondencja...*, vol. I, p. 129), where Sobolewski wrote to prince Lubecki: «I presented to the Emperor everything what the prince writes about Morawski and about the necessity and possibility of simplifying the acts of the Clearing Chamber. He

praised this, what the prince has already made in this respect und he promises himself great advantages from this, what the prince further aims to undertake». (In original: «Przedstawiłem Cesarzowi to wszystko, co mi Książę piszę o Morawskim i możności usyplikowania czynności Izby Obrachunkowej. Pochwalił to, co już sobie Książę dotąd pod tym względem uczynił i znaczne sobie obiecuje korzyście z tego, co Książę jeszcze przedsiębrać zamysła»). Or in a letter of Grabowski dated on 28.06.1828 to Lubecki: «I read a few of prince's letters, the Emperor has been contented with them, namely with the entire article of salt [polish: soli warzonki]». (cfr. ivi, p. 285, in original: «Czytałem kilka listów Księcia, Cesarz z nich był content, a mianowicie z całego artykułu soli warzonki»).

¹¹¹ Letter of Russian Minister Turkuł to Prince Lubecki from 02.09.1829, Smolka, *Korespondencja...*, vol. III, p. 314.

¹¹² A very clear example for this politics was the fact that the correspondence of Lubecki and Grabowski was secretly read by Duke Constantin before being send to Saint Petersburg – possibly already since the beginning of 1823, cfr. Smolka, *Korespondencja...*, vol. I, Introduction, pp. L-LII.

¹¹³ As A. Dziadzio (*Odpowiedzialność odszkodowawcza państwa za bezprawne działania jego organów według ABCB w świetle wykładni Sądu Najwyższego, 1918-1939. Przyczynek do dziejów austriackiej tradycji prawnej w Polsce*, «Krakowskie Studia z Historii Państwa i Prawa» 2012, 5/4, p. 296) rightly points out, the development of the idea of the civil accountability of the state's functionaries took place in XIX century and found its expression not earlier than in the drafts of the Constitutions elaborated during Spring of Nations in 1848. It is worth highlighting that also in the II Polish Common-

wealth [1918-1939], following the declaration of article 121 of the 1921 March Constitution, which due to the lack of more specific legal stipulations remained empty, such a responsibility was not acknowledged up to the decisive decision of the Polish Supreme Court from 02.12.1931, cf. in this respect very interesting remarks made in ivi, p. 298.

¹¹⁴ Kodex karzący dla Królestwa Polskiego: z dodaniem praw kryminalnych późniet uchwalonych, reiestru porządkowego i alfabetycznego, przypisków wskazujących artykuły związek z sobą mające, Warszawa 1830.

¹¹⁵ Fryderyk Skarbek in his history of Polish Kingdom published in the year 1877 (F. Skarbek, *Dzieje Polski, cz. II, Królestwo Polskie od epoki początku swego do rewolucji listopadowej*, p. 61) wrote about «two dangerous rights [meaning here the right of annotating the reports of the State's Council as well as the right of the petition] [...]. The first one opened for the opposition a wide possibility of conducting a fight with the government, of irritating it with disturbing remarks and of making charges, what an absolute tsar could not tolerate from his subjects. [...] The second one authorised to claims and making charges by the conquered nation towards monarch, who deemed the existence of the kingdom and freedoms given to it as an testimony of his grace», in original: «dwa niebezpieczne prawa, to jest: prawo czynienia uwag nad raportem Rady Stanu, czyli krytykowania czynności rządowych oraz prawo petycji [...] czyli zanoszenia próśb, inicjatywą projektów do praw stać się mogących, tudzież zażaleń i domagań się najczęściej z dążnością rządu niezgodnych. Pierwsze otwierało opozycji obszernie pole do toczenia walki z rządem, do drażnienia go przykrymi przymówkami i do czynienia zarzutów, których samowładny cesarz od poddanych

swoich cierpliwie znosić nie mógł. [...] Drugie upoważniało do żądań i domagań się ze strony ludu podbitego od monarchy, który był królestwa i nadane mu swobody za dowód łaski swej poczytywał [...]».

¹¹⁶ It was especially clear in case of the report from 1820, which clearly responded to the criticism issued at this the report presented at the Sejm in the year 1818, cfr. F. Ramotowska, J. Leskiewiczowa (ed. by), "Wstęp" in *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Warsaw 1995, p. 17.

¹¹⁷ Such a legal vacuum existed even though already during the creation of the Kingdom of Poland 1815 the importance of the issue of the ministerial responsibility had been noticed and entrusted to the so called "middle committee", which was responsible for «organizing the responsibility of the ministers and all the functionaries of the national administration», as it was the resolution of the temporary government from 25th September 1815, quoted after J. Bojasiński, *Rządy Tymczasowe w Królestwie Polskim*, Warszawa 1902, p. 265. It is maybe for this reason why prince Drucki-Lubecki in his striving to reform the Kingdom of Poland – what due to the political situation could eventually never take place – was convinced that at the end of such a reform a special organic statute shall be elaborated «concernant la responsabilite des Ministres des Conseillers d'Etat et des fonctionnaires de l'administration», cfr. Report du Conseiller Secretaire d'Etat presente au Gouvernement en 1827, reprinted by Smolka, *Korespondencja...* vol. IV, pp. 15-67.

¹¹⁸ As well as to Senators, State counsellors and "referendarzy", cfr. art. 116 of the Constitution.

¹¹⁹ In this statute granted by the tsar Alexander I, there could only be found one regulation pertaining to the Sąd Sejmowy [art. 57] and

it explicitly confirmed the fact that «in case defined in art. 116 of the Constitution and 157 of the Organic Statute on the national representation the President of the Senate» will convene «all the Senators to Sąd Sejmowy».

¹²⁰ It is interesting to note that the English translation of the art. 116 refers to «accus[ing]».

¹²¹ In the Polish literature Wojciech Witkowski approaching this issue, claimed that the Constitutional responsibility was rather related with the procedure laid down in article 82 of the Constitution, cfr. Witkowski, *Uwagi o urządzenie ministra* cit., p. 263 – see considerations above.

¹²² In the following considerations all the motions to put the ministers under the Sąd Sejmowy will be analyzed. Yet already here it shall be stressed that I do not share the view in *ivi*, p. 263 that: «generally the responsibility of the ministers was understood as a possibility to dispose him of office because of the infringements of the legal regulations». There seems to be little if any source material to support this thesis – also the author does not provide it.

¹²³ The main bulk of the historical literature stems from the period of 1960ties: cfr. J. Łojek, *Studia nad prasą i opinią publiczną w Królestwie Polskim 1815-1830*, Warszawa 1966, Z. Anculewicz, *Rozwój prenumerat gazet i czasopism w Królestwie Polskim w latach 1815-1864*, «Kwartalnik Historii Prasy Polskiej», 1987, 26/4, pp. 5-21, but there is a very valuable work of N. Gąsiorowska, *Wolność druku w Królestwie Kongresowym 1815-1830*, Warszawa 1916. Therefore, in this part of the paper, I relied heavily on the ample Polish secondary literature in this respect, quoting and following the works prepared by the historians of the media and of the society, such as Zbigniew Anculewicz, Natalia Gąsiorowska, Jerzy Łojek or Tadeusz Mencil to show the far-reaching limitations

of the freedom of the press, including a ruthless censorship. I am greatly indebted to those authors and their valuable research. Like the Parrhësia, the practice of the free public speech in ancient Greece, cfr. W. Arlene Saxonhouse, *Free Speech and Democracy in Ancient Athens*, Cambridge 2005, pp. 92-93.

¹²⁴ It can be remained that “Einkommende Zeitung” of Timotheus Ritzsch (1614-1678), a printer from Leipzig, published since June/July 1650 was the world first daily newspaper, whereas the Daily Courant issued in London, the first British daily newspaper, was operating since 11.03.1702.

¹²⁵ In the following considerations I will use the so far elaborated historical studies, especially the very valuable works of T. Mencil.

¹²⁶ Łojek, *Studia nad prasą* cit., p. 99.

¹²⁷ The second most populous city of the Kingdom, Lublin, according to Jerzy Łojek had 14.000 inhabitants, cfr. *ibidem*.

¹²⁸ Cfr. Article 127 and 131 of the 1815 Constitution, for this issue see M. Mycielski, *Rząd Królestwa Polskiego wobec Sejmików i Zgromadzeń Gminnych 1815-1830*, Warszawa 2010, pp. 32-63.

¹²⁹ T. Mencil, *Udział społeczeństwa w życiu politycznym Królestwa Polskiego [sejmiki i zgromadzenia gminne]*, «Przegląd Historyczny» 1968, tom LIX, issue 4, p. 659 [as for the year 1820].

¹³⁰ *ivi*, p. 647, where he estimates their number to be around 40.000.

¹³¹ Statut Organiczny o Reprezentacji Narodowej, art. 59, Dziennik Praw Królestwa Polskiego 1816, vol. I, pp. 307-308 (the source also available in the Internet under: <<http://pbc.biaman.pl/dlibra/docmetadata?id=4231&from=publication>>, last accessed 23.10.2017) where in Article 59 concerning the procedure of voting on a Sejmik it was stated that: «in this list the voting (person) himself or if he cannot write, by the asked person, underlines the

name of this candidate, for which he votes» (in original: «Na tym spisie podkreśla głosujący bądź sam, bądź jeżeli pisać nie umie przez uproszoną osobę nazwisko tego Kandydata za którym głos swój daie»).

¹³² Mencil, *Udział społeczeństwa* cit., pp. 649-653.

¹³³ *ivi*, pp. 649-655.

¹³⁴ Very instructive is the information provided by Łojek, *Studia nad prasą* cit., pp. 102-103, who quoting the historical data states that in the year 1829 there were only 752 students at the University in Warsaw and barely 47 600 persons were benefiting from any kind of education. Still in the year 1858 approximately 79,3% of the population of the former provinces of the Kingdom was classified as total analphabets. To put those date in a context, in the ancient Rome the levels of literacy – depending on the province – varied between 5 and 10%, even though some authors, especially William V. Harris, *Ancient Literacy*, Harvard 1991, p. 329 claim that: «cities may have seen literacy on an early modern scale, perhaps even at a level of 30-40% among the free-born men – though hardly among the women», cfr. also L.A. Curchin, *Literacy in the Roman Provinces: Qualitative and Quantitative Data from Central Spain*, «The American Journal of Philology», vol. 116, No. 3 [Autumn, 1995], pp. 461-476.

¹³⁵ Łojek (*Studia nad prasą* cit., pp. 110-112) excluding however technical journals adressed to the owners of the landestates. There are nonetheless important discrepancies as far this data is concerned: according to Zbigniew Anculewicz, the total number of the readers of the informative press «did not exceed 30-40 thousand» (Anculewicz, *Rozwój prenumerat gazet* cit., p. 5).

¹³⁶ Very valuable is the estimation that the population of Kingdom of Poland, reaching in the year 1825 8,33 % of that of the Kingdom of

- France, only had access to 2,5% of the volume of the press printed in this Bourbon monarchy (ivi p. 6) for his part states that every 28th inhabitant of the Kingdom was subscribed to a newspaper.
- ¹³⁸ Gąsiorowska, *Wolność druku w Królestwie Kongresowym* cit., p. 171. Curiously enough, important part of those newspapers was subscribed by the French living in Warsaw.
- ¹³⁹ Out of 156 of all Polish journals which were published in this period altogether, cfr. Łojek, *Studia nad prasą* cit., p. 131.
- ¹⁴⁰ For example "Kronika drugiej połowy 1819 roku", issued by Bruno Kiciński appeared for 17 days (starting from 1 July till 17 July 1819 amounting altogether to 7 issues).
- ¹⁴¹ Cfr. Łojek, *Studia nad prasą* cit., p. 139.
- ¹⁴² F. M. Sobieszczański, *Rys historyczno-statystyczny wzrostu i stanu miasta Warszawy*, Warszawa 1848, pp. 267-268, with the statement: «Kuryer tysiące ludzi nauczył czytać» («Kuryer learned thousands of people to read»).
- ¹⁴³ E.g. the editors of *Pamiętnik Warszawski* explicitly complained about the high costs of paper: (*Pamiętnik Warszawski* 1820, grudzień, pp. 538-539) stating that: «we would gladly lower its price, if the high price of the paper, both second and first quality, which we, for the lack of domestic factories, have to import from abroad, allowed us to do this» [in original: «radziłyśmy cenę jego zniżyli, gdyby wysoka opłata papieru, tak pośledniejszego iak przedniejszego, który wciąż iezcze z zagranicy, dla braku fabryk krajowych, sprowadzać musimy, dozwoliła nam tego»]. Cfr. Łojek, *Studia nad prasą* cit., p. 128.
- ¹⁴⁴ Amounting to over 220% of the price charged by the foreign newspapers with transports costs to the Kingdom of Poland included, ivi, p. 165.
- ¹⁴⁵ According to Zbigniew Anculewicz, p. 10 they constituted between 20 and 50% of the total costs of each issue of the newspaper. It is interesting to note that whereas a yearly subscription costed between 40 and 80 PLN, the salary of a minister did not exceed 6000 PLN, cfr. *ibidem*.
- ¹⁴⁶ Ivi, p. 225.
- ¹⁴⁷ However, it has to be stressed that following a decision of Duke Constantin in 1830, the censorship did allow relations about the revolutionary wave which occurred in 1830 to be published.
- ¹⁴⁸ Gąsiorowska, *Wolność druku w Królestwie Kongresowym* cit., p. 187.
- ¹⁴⁹ The first decision concerned periodical press, the second all published works, the third pertained to the lithography and sketches. They were sparked by a public argument following the controversial play in the Warsaw's Theatre, what led to articles criticizing the reaction of the government, which prohibited viewers from manifesting their discontent, deemed to be offensive by the authorities in the Kingdom, ivi, pp. 54-70.
- ¹⁵⁰ Ivi, pp. 95-100.
- ¹⁵¹ This letter has been interestingly reprinted in ivi, pp. 315-325 and included into the database of the ReConFort project.
- ¹⁵² Ivi, p. 129.
- ¹⁵³ Ivi, p. 131.
- ¹⁵⁴ Ivi, p. 190. However Szaniawski after having established this bureau was not very active himself and almost all the factual work was done by three functionaries of the bureau: Mr Modest Kosicki, Mr Wincenty Niepokojczycki and Mr Łubkowski, in ivi, p. 155. Previously the censors changed frequently, see in depth on this issue ivi, pp. 126-129.
- ¹⁵⁵ For instance, according to ivi, p. 159 in the year 1823 it were 180,000 Polish złotych which were spent without revealing them in the public budget.
- ¹⁵⁶ Ivi, p. 165.
- ¹⁵⁷ It is interesting to note that the censorship has been repeatedly criticized by the deputies to the Polish Sejms, e.g. during the Sejm 1820 (cfr. Ramotowska, Leskiewiczowa (ed. by), *Sejm Królestwa Polskiego* cit., pp. 70-71, 161], but there can also be encountered stances which accept it. The clearest case of this latter attitude is the opinion of the Senate in the year 1825, which stated: «Senate, bearing in mind the current circumstances is obliged to admit that due to the political reasons this censorship appears to be indispensable, it feels however that it has to be will of the Monarch that it would be administered with such a caution and reasonableness that the enlightenment of the nation does not retract as the reason of it [...]». (ivi, p. 253) In original: «Senat z uwagi nad okolicznościami obecnymi wyznaczyć jest przymuszony, iż z powodów politycznych cenzura ta zdaje się być w czasie terażniejszym nieodzowną; czuje jednak, iż wolą Monarchy być musi, ażeby ona z taką ostrożnością i rozumą sprawowana była, iżby się z jej przyczyny oświecenie narodu wstecz nie cofało [...]». Maybe such intimidating tone was related with psychological pressure on the deputies, who had to face the presence of clerks from administration of the Duke Constantine's Chancellery, cfr. Przelaskowski, *Sejm warszawski roku 1825* cit., pp. 88, 96-97.
- ¹⁵⁸ Gąsiorowska, *Wolność druku w Królestwie Kongresowym* cit., p. 9.
- ¹⁵⁹ Ivi, p. 30. However as Gąsiorowska rightly points out, it had little importance, since the majority of the books were imported from abroad due to weakness of the print industry and this censorship was not enforced for every newspaper.
- ¹⁶⁰ For an overview of those losses cfr. K. Konarski, *Archiwum Akt Dawnych w Warszawie*, in *Straty Archiwów i Bibliotek warszawskich w zakresie rękopiśmiennych źródeł historycznych*, vol. II, ed. K. Konarski, Warsaw 1956, pp. 82-83.

- ¹⁶¹ Ivi, pp. 82–83.
- ¹⁶² Konarski, *Archiwum Akt* cit., pp. 142.
- ¹⁶³ Łojek, *Raport z dostrzeżeń cenzury z roku 1823*, *Rocznik Historii Czołpismniennictwa Polskiego* 1969, 8/3, p. 357.
- ¹⁶⁴ Among the press which has been an object of the research there have been i.a. the following newspapers: *Kurier Warszawski*, *Orzeł Biały*, *Pamiętnik Warszawski*, *Temida Polska*, *Sybilla Nadwiślańska*, *Gazeta Polska*, *Gazeta Literacka*, *Gazeta Warszawska*, *Dziennik Wileński*, *Pamiętnik Lwowski*, *Pszczółka Polska*, *Gazeta Codzienna Narodowi i Obca*.
- ¹⁶⁵ Such as NA, NA, *Mowa Sejmowa w obronie Stanisława Zamoyskiego 1831* or B. Niemojowski, *Obrona przed Senatem Królestwa Polskiego 1825*.
- ¹⁶⁶ E.g. NA, NA, *Manifest Narodu Polskiego* or NA, NA, *Do Rodaków Bawiacych w Paryżu*.
- ¹⁶⁷ E.g. Correspondence between Adam Czartoryski and Ignacy Sobolewski form the Czartoryskich Library or Correspondence of Prince Drucki Lubecki, ed. by Smolka, *Korespondencya* cit.
- ¹⁶⁸ Such as A. Czartoryski, *Memoirs of Prince Adam Czartoryski*, vol. II, ed. by A. Gielgud, London 1888 or Augustyn Ślubicki, *Pamiętniki z lat 1816–1831*, unpublished source stored in Bibliothèque Polonaise à Paris, source number: BPP 416.
- ¹⁶⁹ E.g. F.K. Szaniawski, *Kazania przez X. Szaniawskiego w Warszawie 1819*, vol. II, Kazanie VI.
- ¹⁷⁰ Such as a treaty written by D. Dzierzozynski, *Rzecz o Sądownictwie Naywyższem*, Warsaw 1828.
- ¹⁷¹ Such as Bieczynski (ed. by), *Sąd Sejmowy* cit.
- ¹⁷² Including: The Raczyńskich Library in Poznań, The University Libraries in Warsaw, Wrocław and Poznań.
- ¹⁷³ Available under: <www.sources.reconfort.eu>.
- ¹⁷⁴ "Myśli Polaka Konstytucyjnego. Cześć pierwsza". *Orzeł Biały* 1820, vol. I, Number 3 [part I] and 6 [part II]. Let here an opinion of a contemporary Prot Lelewel about Orzeł Biały be quoted: «Nadsyłano też wiele artykułów w rozmaitych przedmiotach; miano szczególnie na uwadze zdrożności, niedorzeczności, nadużycia władz wykrywać. Było to nader skutecznym hamulcem na postępowanie urzędników, a razem uprzedzało władze wyższe o złem, któremu one zabobiegać tym rychlej mogły» (*Lelewel, Prot, Pamiętniki i diariusz domu naszego*, ed. Lelewel-Friemannowa, Irena Wrocław-Warszawa-Kraków 1966, p. 254, in English: «There were also many articles sent in concerning various issues, especially paying attention to unmasking indecencies, absurdities and the abuse of the power. It was a very effective control instrument for the conduct of the clerks, at the same time it made the higher authorities attentive to the evil, which they could prevent earlier»).
- ¹⁷⁵ According to Fryderyk Skarbek, the author of this text was Albert (Wojciech) Grzymała who with this publication attempted to «accommodate and popularize in our country the doctrinal principles of the French liberalism, so incompatible with our traditions and needs», cfr. F.H. Skarbek, *Pamiętniki*, Poznań 1878, p. 72 (in original: «z dążnością wszakże przyswojenia i upowszechnienia w kraju naszym zasad doktrynerskich ówczasowego liberalizmu francuzkiego, tak niezgodnych z tradycjami i potrzebami naszymi»).
- ¹⁷⁶ "Myśli Polaka Konstytucyjnego. Cześć pierwsza", *Orzeł Biały* 1820, vol. I, Number 3, p. 44, in original: «Jak podczas narad Sejmowych, Urzędnicy odpowiedzialni, nie powinni się podszywać pod żadnym pozorem pod święte i nietykalne słowo Król, w celu przepuszczenia łatwiejszego przez Izby propozycji i projektów; tak też żaden pisarz nie powinien Go mieszać między własne zdania».
- ¹⁷⁷ Ivi, Number 6, p. 108, in original: «Sejm jest przeznaczony do pociągania Urzędników do odpowiedzialności, do rozważania czyli w prawach do których podane muszą projekta, nie wystawia się na uszczerbek szczęście lub swoboda mieszkańców».
- ¹⁷⁸ Ivi, Number 6, p. 110, in original: «Im silniej odpowiedzialność Urzędników będzie zapewniona; tem więcej przyjaciele swobód Konstytucją dozwolonych będą spokojni o ich całość, tem więcej będą mieli przywiązania do Rządu. Przy Sejmie dzielnym, Władze Rządowe będą czynniejsze, będą pilnować się Konstytucji; porządek rzeczy publicznej stanie się niewzruszonym».
- ¹⁷⁹ Ivi, Number 6, p. 112, in original: «Bez odpowiedzialności Urzędników, odpowiedzialność Ministrów jest tylko urojeniem. Gdyby potrzeba zapożywać Ministra Wojny za uchybienie każdego Żadnarma albo Ministra Policji za fałszywą denuncjację każdego Policjanta, wtedy nie byłoby pewności dla nikogo».
- ¹⁸⁰ Ivi, vol. I, Number 6, p. 117. In original: «I tak, gdy Władza wykonawcza zapomina się i wschodzi z granic prawem zakreszonych, Król podług Artykułu 30 i 47. Konstytucji, pociąga i ją do odpowiedzialności». This idea strongly resembles the doctrine of Pouvoir neutre as developed by B. Constant, cfr. F. Weber, *Benjamin Constant und der liberale Verfassungstaat*, Wiesbaden 2004, pp. 258–268.
- ¹⁸¹ And being for this reason subjected to one of the harshest censorships, cfr. S. Milewski, A. Redzik, *Themis i PHEME. Czasopiśmiennictwo prawnicze w Polsce do 1939 roku*, Warszawa 2011, p. 42.
- ¹⁸² *Orzeł Biały* 1820, vol. I, iss. 4, p. 70, in original: «bo urzędnik nie ma prawa i niepowinien tam własności osobistej i mocy przekonania ograniczać, gdzie ją ustawy równie Rząd jak Naród obowiązujące, w całej rozciągłości wybór czyniącym przyznały». It shall be also added that the vast majority

of the administrative staff in the Kingdom had to pass special examinations to be allowed to exercise public functions, cfr. M. Gałędek, *System rekrutacji wykwalifikowanych kadr urzędniczych w konstytucyjnym Królestwie Polskim*, «Miscellanea Historico-iridica» 2014, t. XIII, z. 1, s. 137.

¹⁸³ Letter from 26 and 27.01.1822, Smolka, "Korespondencja Lubeckiego z Ministrami Sekretarzami Stanu Ignacym Sobolewskim i Stefanem Grabowskim", ed. by Smolka, *Korespondencja...* cit., vol. I, p. 149, in original it stated: «Przynam nawet, że mnie się wydaje, iż nie należy konstytucyjny budżet układać, póki nie zostaną urządzone dochody, a że smutkiem tutaj tę prawdę wyznać muszę, iż u nas żadnego podatku ani dochodu systematycznie urządzonego nie mamy».

¹⁸⁴ Themis Polska 1830, vol. VIII, pp. 319-320, in original: «nie dać rękoyami. W rządzie reprezentacyjnym wszystkie sprzężyny polityczne, to jest wszystkie władze tak są utracone, że żadna nie może się stać narzędziem ucisku. Administracja przeto, iako iedna z tych władz ma także swe wędzidło, ma swoią karność. Wszelkie iey czyny rozpadają się na dwa wielkie działy: postanowienia króla, decyzye ministra: obadwa stoją pod odpowiedzialnością ministra, odpowiedzialnością, która w rządzie konstytucyjnym unosi się na kształt Damoklesowego miecza po nad każdym aktem zawiadującym, bo każdy bez wiyatku, czy on iest prosto-administracyjny czy sądowo administracyjny, iest wypływem albo rozporządzenia ministra, albo kontrasygnowanego postanowienia króla. Tutaj więc iest gwarancya. Jak ją ubezpieczyć, iak uczynić możną i skuteczną, to leży po za zakresem naszego pisma; dosyć, że w prawie iest ona zawarowaną».

¹⁸⁵ Manifest Narodu Polskiego uchwalony dnia 20 grudnia 1830 roku przez obie izby sejmowe Królestwa Polskiego, p. 8, in original:

«Nadaremnie niektóre władze i reprezentanci narodu wystawiali królowi obraz nieprawości w jego imieniu dopełnianych: nietylko naduzycia te ukroconemi nie były, ale nadto odpowiedzialność ministrów i władz rządowych przez bezpośrednie brata cesarskiego działanie i władzę dyskrejonálną jemu udzieloną, zupełnie zniknęła».

¹⁸⁶ Source unpublished, retrieved by the author of this text from AGAD, the source number: Fonds 391, sygn. 1252a.

¹⁸⁷ The parts of the texts with question marks are illegible. In original it stated: «Rozkazy Króla lub przez niego podpisane, gdyby się sprzeciwiały Konstytucji i prawom, nigdy jako od niego pochodzące uważanymi bydź nie mogą bo Król nigdy przeciw Konst [ytucji] i prawom nie chce. Są to zasady wszelkich Konst wpływają. Powodem do podobnych Rozkazów jest zawsze fałszywe przedłożenie Ministra. Minister, który by się poważył na przełożenie fałszywe swoje [?] Króla do przyjęcia jego opinii nakłonić usiłują są za to odpowiedzialnymi [będą i ?] za to po odesłaniu Króla do Izby poselskiej przed Senatem [Minister?] oskarżony i przed Sądem Sej [mowym] sądzonym będzie».

¹⁸⁸ This the summary of the content of decision de S.M. I emp. Et roi relativ aux observations de la diete sur le report du conseil d'etat sur les operations du gouvernement from 4. September 1818 provided by Gąsiorowska (*Wolność druku w Królestwie Kongresowym* cit., p. 45), who related it in original in the following words: «zakazuje izbie strofować postępkę rządu, czynić mu wyrzuty [...]». I should be added that also in a source retrieved by the author of this text from PAN and PAU Library in Cracow, manuscript number 1620 [microfilm number 1798] in a statement of minister secretary of state Ignacy Sobolewski from 23. August 1817, p. 1 we can find a following formulation: «[...] in the first place it was necessary

that the chambers strictly limited themselves within power, which is given to them in this respect according to art. 154 of the organic statute upon the national representation. This article does not empower to criticize the deeds of the government, to charge it, but only to express its opinion about the presentations made to the Sejm». (In original: «[...] należało przede wszystkim, ażeby się izby ściśle ograniczyły w obrębie władzy, jaką im pod tym względem art. 154 Statutu Organicznego o Reprezentacji Narodowej wyznacza. Artykuł ten nie upoważnia ich do strofowania postępów rządu, nie upoważnia do czynienia mu wyrzutów, lecz jedynie do wyrażania zdania swego z powodu uczynionych sejmowi przedstawień». Yet it has to be stressed that the author of this text who had been reseraching in AGAD and had access to the digitalised version of I Rada Stanu Królestwa Polskiego, AGAD Fonds 184, sign. 251, unfortunately did not find the source in the place where it was to be supposedly located according to Ramotowska, Leskiewiczowa (ed. by), *Sejm Królestwa Polskiego* cit., p. 148.

¹⁸⁹ These protocols are available in the Internet at the websites of Lower Silesian Digital Library: www.dbc.wroc.pl, last accessed: 23.10.2017.

¹⁹⁰ It has to be stressed that this liberal opposition was based on directly uptaking the ideas of Benjamin Constant and did not develop own political program, cfr. in this respect H. Więckowska, *Opozycja liberalna w Królestwie Kongresowym 1815-1830*, Warszawa 1925, p. 166, who stated: «in the society itself there was no clear political thought» [in original: «W samem społeczeństwie nie było jasnej myśli politycznej» with whom I fully agree. Maybe the proof for it is an article reprint of the speech held by P. Courvoisier, a French deputy discussing the draft of the law upon the ministerial responsibil-

ity on 25th March 1819, published in *Gazeta codzienna narodowa* y obca 1819, issue 158, pp. 1-2 (included also in the database of the project). Apart from quotations from this speech there is neither an editorial commentary nor any published letters of the readers referring themselves to this question.

¹⁹¹ Dyaryusz Seymu Królestwa Polskiego 1818, vol. III, Warszawa 1818, p. 51, in original: «obowiązkiem jest naszym, zwrócić uwagę Izby na dążność Antykonstytucyjną Ministrów J.K. Mości, na wielorakie pogwałcenie Konstytucyi, przywilejów Ludu i Seymu».

¹⁹² *Ibidem*, in original: «Zanieśmy uwagę do Tronu Nayaśniejszego PANA, czy to w formie przełożenia, czy też według Artykułu 157 Statutu Organicznego o reprezentacji w formie zaskarżenia ministrów, te ciężkie uchybienia przeciw Konstytucyi». Nonetheless, this voice remained futile.

¹⁹³ As the basis for the ensuing quotations I treat the edition: *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Ramotowska, Leskiewiczowa (eds. by), *Sejm Królestwa Polskiego* cit. It is worth highlighting they were formulated separately by the Sejm and Senate.

¹⁹⁴ *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Ramotowska, Leskiewiczowa (ed. by), *Sejm Królestwa Polskiego* cit., pp. 57-58, in original polish legal version: «Izba Obrachunkowa tą razą nie dostarczyła Sejmowi wiadomości o rezultatach i pozytkach prac swoich [...] spodziewać się trzeba, że w przeciągu czasu, który upływie do przyszłego Sejmu, potrafi ona zapewne zalety swoje ułatwić i [...] przychodzić będzie w pomoc izbom sejmowym w tym ważnym ich zatrudnieniu kontroli wszelkich dochodów i rozpoznawaniu prawnego ich użycia».

¹⁹⁵ *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Ramotowska, Leskie-

wiczowa (ed. by), *Sejm Królestwa Polskiego* cit. p. 58, in original it sounded: «Nie, zaiste wszyscy równie pragniemy świętości Konstytucyi, lecz wszyscy uczyemy się jej dotąd; błądziemy przez brak wprawy i przez nieświadomość. Dopiero jak się w nią wdrożym, kiedy wszystko wejdzie w swoje karby, kiedy doświadczenie wskaże błędy dowiedzie, jak rzeczy isć mogą i powinny, wówczas mówię: urzędnik publiczny stanie się istotnie winnym, kiedy przeciw Konstytucyi postąpi, bo to przestępstwo chyba już umyślnie popełnił i z zupełną wiadomością, że źle czyni. [...] A chociaż z jednej strony niesłusznie byłoby administracją i ministrów za uchybienia przepisów Konstytucyi pod surowość praw podciągać, z drugiej atoli najwinniejszym okazałby się Senat, gdyby dostrzegwszy zbroczenia nie uwiadomił o nich Tronu, bo takim jedynie postępowaniem Konstytucja prawdziwie się zagruntować może».

¹⁹⁶ *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Ramotowska, Leskiewiczowa (ed. by), *Sejm Królestwa Polskiego* cit. p. 59, in original: «Pozostaje nam na koniec obrócić uwagę Króla i dobroczyńcy naszego na opuszczenie jednego z kardynalnych przepisów Konstytucyi, opuszczenie, które w innym czasie i innych okolicznościach winę by ministrów do wysokiego podniosło stopnia, a tym jest: iż żaden z nich nigdy dekretów Najjaśniejszego Pana nie kontrasygnuje mimo wyraźnego nakazu Konstytucyi w art. 47 i wbrew całemu duchowi reprezentacyjnego rządu, którego węgielną zasadą jest odpowiedzialność ministrów».

¹⁹⁷ *Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830*, Ramotowska, Leskiewiczowa (ed. by), *Sejm Królestwa Polskiego* cit. pp. 60-61, in original: «Nie masz znaczniejszego urzędzenia ministrów, nie masz odmawiania ważniejszym pety-

cją sejmowym, które by nie było okryte tym świętym imieniem. Ite ten sposób jest naturze monarchii konstytucyjnej przeciwny, jak jest zagrażający wolności obrad naszych, każdemu jasno. [...] Mądrze bardzo Ustawa Konstytucyjna między monarchią a ludem postawiła ministrów, aby byli puklerzem monarchy we wszystkich politycznych zatargach; Rada Stanu stawia tutaj imię monarchy między ludem a ministrami, jak by do monarchy należało być puklerzem ministrów swoich. Król w rządzie konstytucyjnym nie działa, tylko przez ministrów swoich. [...] Osoba polityczna monarchy jest miana za doskonałą, król nie może chcieć złego, nie może o niem pomyśleć. Jeżeli porządek jest zgwałcony przez wykonywanie władzy, prawo ściga ministra. Jeżeli porządek jest zgwałcony przez wykonywanie władzy, prawo ściga ministra. [...] Na cóż by się zdała odpowiedzialność ministrów, gdyby ci mogli swoje antykonstytucyjne, opinie świętością osoby królewskiej zasłonić. Kiedy ministrowie zastaniają się imieniem królewskim, wtenczas Sejm jest przymuszony albo ugiąć się przed władzą absolutną, albo walczyć z władzą nietykalną. Smutna alternatywna!».

¹⁹⁸ Cfr. B. Constant, *On the responsibility of ministers* in: *Political Writings*, ed. by B. Fontana, Cambridge 2003, pp. 234-235, and 237: «The prosecution of ministers is, in practice, a trial between the executive power and the power of the people. [...] The representatives of the nation, called to watch over the use of power and the acts of public administration, more or less informed about the details of negotiations since the ministers are obliged to report to them about these when they are concluded, may appear as well-qualified as the peers to decide whether the ministers deserve approval or blame, indulgence or punishment. [...] The monarch is in a separate, sacred

precinct. Your concerns, your suspicions, must never touch him. He has no intentions, no weakness, no connivance with his ministers, because he is not really a man but an abstract and neutral power above the storms».

¹⁹⁹ Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830, Ramotowska, Leskiewiczowa (eds. by), *Sejm Królestwa Polskiego* cit. p. 179, in original: «Skoro tylko na zesłym Sejmie wniesione było życzenie, aby stosownie do art. 47 Konstytucji i postanowienia opatrzone byływały podpisem ministrów, natychmiast pilne tego prawda zalecił wykonanie. Jedno tylko zboczenie od tej głównej zasady dostrzec się dało przez mylne poświadczenie postanowienia z dn. 16 lipca 1819 r. podpisem nie ministra, lecz Rady Stanu, przeciwko artykułowi 47-u i 73 Konstytucji [...]».

²⁰⁰ In might be interesting to quote the memoirs of the deputy to that Sejm, Prot Lelewel, who stated: «Sejm started with violence and the violent manifestations during it, intertwined with distraction [...] exasperated more than soothed the minds of those who could feel their humiliation, the humiliation of the nation». [In original: «Sejm przez gwałty rozpoczęty i gwałtowne manifestacje w ciągu jego, przeplatany dystrakcjami [...] jątrzył więcej, aniżeli łagodził umysły tych, co czuć umieli poniżenie swoje, poniżenie narodu» (I. Lelewel-Friemannowa – ed. by – *Prot, Pamiętniki i dziennik domu naszego, Wrocław - Warszawa - Kraków 1966*, p. 277)].

²⁰¹ Sejm Królestwa Polskiego o działalności rządu i stanie kraju 1816-1830, Ramotowska, Leskiewiczowa (eds. by), *Sejm Królestwa Polskiego* cit. p. 221, in original: «Nie zawsze wprowadzie książę minister chwycił się środków, które by mu wskazywać powinny ścisła rozważa Konstytucji, poszanowanie praw i własności prywatnych i dobra wiara, która cecho-

wać powinna wszystkie czynności rządu».

²⁰² Ivi, p. 281, in original: «Z mocnym podziwieniem dostrzeżliśmy, iż Komisja Rządowa Sprawiedliwości dopuściła się pogwałcenia artykułów 138 i 139 Karty Konstytucyjnej przez dowolną bez wyroku dyscyplinarne-go translokację sędziów».

²⁰³ Ivi, p. 284. They stem from the remarks of the Deputies Chamber on the Sejm in the year 1830. In original: «Co za sprzeczność! To Rada Stanu i ministrowie, z uchybieniem obowiązkom swoim, nie zajmują się rozwinięciem artykułów Konstytucji, gdzie ono wyraźnie jest przepisane, a chcą rozwijać to, do czego prawa nie mają, z ujmą atrybucji prawodawczej sejmowym izbom służącej władzy, z narazieniem najdrożych swobód narodowych!».

²⁰⁴ It should be "art.", quoted as in original.

²⁰⁵ Ivi, pp. 294-295 (remarks of the deputies' Chamber), in original: «[...] nie mogą komisje Wasze pominąć nadużyć i postępowania nadzwyczajnego, jakich dopuścili się ministrowie przy zatrzymaniu instrukcji sprawy o o zbrodnie stanu obwinionych, którzy później przez wyrok Sądu Sejmowego za niewinnych w tym zarzucie uznanymi zostali, a jednakże w skutku działania nieprawego, wbrew uroczystym zaręczeniom wspaniałomyślnie nam danej i przez nas z wdzięcznością przyjętej Konstytucji nastąpnego, kilkoletnie bolesne więzienie wycierpieli. Jaki okropny przykład nietrymania się ściśle prawideł Konstytucji, które nam najdroższe dobro człowieka, wolność osobistą zaręczają. Nie może tu służyć na usprawiedliwienie ministrów, iż dotąd [w] myśl art. 159 Statutu Organicznego o Reprezentacji Narodowej nie mamy postanowionego przez osobne prawo sposobu postępowania w podobnych sprawach, gdy z jednej strony, jeżeli projekt w tym przedmiocie na Sejmie r. 1820 podany, przyjęty

nie został, powinnością było ministrów wniesienie takowego na Sejm 1825 r., co nawet na ten Sejm nie nastąpiło, z drugiej strony żadne prawo, choćby one na Sejm wniesione i przyjęte było, nie mogło, w myśl § 90 Konstytucji narażać swobód narodowych, gdy, jak się powyżej dowiodło, zaręczenia te, wolności osobistej dotyczącej się, Sejm nawet ścieśniać ani zmieniać nie jest mocen. 4. Krzyżącym jest jeszcze nadużycie, jakiego się względem oddanych pod Sąd Sejmowy dopuszczono, gdy wstrzymano publikacją i egzekucją wyroku sejmowego, a co więcej obwinionych z kraju wywieziono, zgwałcono więc § 138 Konstytucji, niepodległość sądownictwa stanowiący, dalej § 139 – gdy tym sposobem wpływ władzy ministerialnej na sądy rozciągnięto [...]».

²⁰⁶ Ivi, pp. 328-329, in original: «Wprawdzie art. 162 teje Konstytucji stanowi, iż pierwszy budżet dochodów i wydatków będzie urządzonym przez króla, lecz ileż od r. 1815 jest budżetów przez Najjaśniejszego Pana zatwierdzonych, wszak co rok jest przez Radę Stanu pod zatwierdzenie Najjaśniejszego Pana budżet przedstawiony, a więc ten artykuł już jest zupełnie wykonany, więcej nawet Rada Stanu już jego nadużyła, przedstawiając 14 budżetów pod zatwierdzenie królewskie. [...] Rada Stanu już nie może żadnego budżetu pod zatwierdzenie królewskie przynosić bez oczywistego zgwałcenia Konstytucji, a szczególnie art. 91, 93 i 162. [...] komisje sejmowe [...] mniemają oraz, iż Sejm niniejszy powinien podać petycją do Najjaśniejszego Pana, w której należy wystawić, iż art. 162 jest już wykonany, iż żaden budżet oprócz konstytucyjnego, przez izby uchwalonego, nie może mieć miejsca bez wyraźnego zgwałcenia tej Karty Konstytucyjnej, która tak uroczystie przez króla i naród w obliczu Boga zaprzysiężoną została».

²⁰⁷ Ivi, p. 331. In original: «Mini-

- ster spraw wewnętrznych i policji uczynił układ z Bankiem Polskim [...] Nie wchodząc w sam układ, to minister w takiej ugodzie wyraźnie zgwałcił Konstytucję, gdyż ta stanowi, iż budżet przychodu trwa dwa lata, jakże minister mógł na 16 lat robić podatku przeznaczenie?»). The same criticism has been repeated by Senate, which stated that "Commission for internal Affairs crossed the limits of its power (cfr. *ivi*, p. 414).
- ²⁰⁸ *Ivi*, p. 430, in original: «Art. 106 Konstytucji wyraźnie postanawia, że raporty Rady Stanu z corocznych czynności rządu wraz z rachunkami składane będą w Senacie. [...] Szczegółowe wykazy każdego wydziału rządowego, rachunki takżej każdej gałęzi służby publicznej postawiłyby nas w możności osądzenia najbezsronniej [tak jakbyśmy chcieli] i gorliwych starań ministrów, i przeszkód, którymi usprawiedliwiają się czasem niepowodzenia lub zwłoki».
- ²⁰⁹ The basis for the following considerations will be the Dziennik posiedzeń Izby poselskiej w czasie seymu Królestwa Polskiego w roku 1820 odbytego, Warszawa 1820, also available under: <<https://babel.hathitrust.org/cgi/pt?id=nyp.33433051572141;view=1up;seq=374;size=175>> [last accessed 9.9.2018]. It has to be taken into account that this diary has been heavily censored and does not represent the entire breath of its debates.
- ²¹⁰ Dziennik posiedzeń Izby poselskiej w czasie seymu Królestwa Polskiego w roku 1820 odbytego, Warszawa 1820, part I, p. 55, in original: «znajdując, że w rządym Rządzie Osoba Monarchy nie iest tyle świętą, ile w Konstytucyjnym, gdyż w rządzie swym Monarcha nie myli się ani błędzi, radził, aby przez należne Uszanowanie Tronowi, w dyskusjach między Reprezentantami a Radą Stanu, względem dzieła przez Nią utworzonego, nie wspominali świętej Osoby Nayiasniejszego Pana». The name of the speaker is not mentioned in the Sejm's Diary and it is unknown.
- ²¹¹ *Ivi*, part I, p. 73, in original: «Artykuły 458-472-473-473 odpowiedzialność Ministrów 116tym Artykułem Konstytucji zaręczoną, do Organizacji Sądu Seymowego odsyłające, pozbawiają krątey naydroższej rękoyami swobód Narodowych, bez którey najliberalniejsza Ustawa na nic się nie przyda, ieżeli Minister będzie mógł bezkarnie dokonać to, czego sobie Panujący sam odmówił».
- ²¹² *Ivi*, part I, pp. 99-100, in original: «Artykuł 16 karty Konstytucyney, zapewniając wolność druku [...] prawo przeto takowe, przed którem w kraiu wolnym wszyscy, a Ministrowie nayród, korzyć się powinni [...]».
- ²¹³ *Ivi*, part II, p. 132, in original: «we wszystkich Państwach reprezentacyjnych Rada Stanu i Ministrowie są puklerem między Królem a Narodem» [...] gdy we wszystkich Państwach reprezentacyjnych, Rada Stanu i Ministrowie są puklerzem między Królem a Narodem, u nas przeto Król między Narodem a Radą Stanu nie może być puklerem».
- ²¹⁴ *Ivi*, part I, p. 262, in original: «[...] próżny popęd oppozycji nie uniesie zapewne nikogo z Reprezentantów, gdy Rada Stanu zostawać zechcę w świętym obrębie Konstytucyi, a ieżeli Ministrowie będą Konstytucyjnemi, cała Izba Poselska stanie się Ministeryalną».
- ²¹⁵ *Ivi*, part I, p. 172.
- ²¹⁶ *Ivi*, part I, pp. 307-308, in original: «Urządnik o przestępstwo obwioniony, będzie przez Izbę Poselską oskarżony a za poszednictwem Rady Stanu, przez Króla pod Sąd Senatu oddany».
- ²¹⁷ *Ivi*, part I, pp. 309-310, in original: «[...] dwa artykuły, mianowicie ieden art. 116 Konstytucyi drugi art. 157. Statutu organicznego są z sobą w wielkiej sprzeczności [...] pośrednictwo w tym iednak względzie Rady Stanu między Królem a Narodem uważał być
- sprzeciwiającem się powadze Izby i dobremu porządkowi».
- ²¹⁸ *Ivi*, part I, p. 310, in original: «[...] pośrednictwo takie sprzeciwia się powadze Izby; wystawując sobie bowiem Władzę Konstytucyjną nieiako z dwóch ciał złożoną, to iest z Króla i Narodu, Radę Stanu która iest radą króla, należy koniecznie niższą od Narodu uważać; przez wzgląd przeto na godność Króla i narodu, Radę Stanu do pośrednictwa między Tronem a Izbą poselską przypuszczac nie wypada». The same view has been presented by deputy Walchowski, *ivi*, p. 369.
- ²¹⁹ It is clear from the final statement of this deputy that it «shall be permissible for the Chamber to directly charge the clerks before the competent Court of the Senate», cfr. *ivi*, part I, p. 311 [in polish language version: «aby stosownie do ducha Konstytucyi i Jey Art. 116 dozwolonem było Izbie wprost oskarżać urzędników przed Sąd właściwy Senatu»].
- ²²⁰ *Ivi*, part I, p. 312, in original: «Mówca w tym względzie zadnego nie znajdował przepisu». The speaker mentioned here is the Deputy Kozłowski from the Płockie region.
- ²²¹ *Ivi*, part I, p. 313, in original: «art. 157 Statutu o Reprezentacyi Narodowej znajdował zupełnie nieodpowiadającym zamiarowi Konstytucyjnemu, [...] niezgadzał się bynajmniey, aby pośrednictwo Rady Stanu w przesyłaniu zaskarżeń było użytcznem».
- ²²² *Ibidem*, and for this reason he rejected the project as inconsistent with the Constitution.
- ²²³ *Ivi*, part I, p. 315, in original: «odpowiedzialność Ministrów nayspeyniejszą swobód Narodowych iest rękoymią».
- ²²⁴ *Ivi*, part I, p. 316, «tam ani Król, ani Naród, a tym mniey my iego Reprezentanci stanowić możemy».
- ²²⁵ *Ivi*, part I, p. 317, in original: «Izba Poselska ma równe prawo zaskarżenia ich w Senacie».
- ²²⁶ *Ivi*, part I, p. 318, in original:

- «sprzeciwia się zupełnie art. 116 Ustawy Konstytucyjnej, w którym żadnej o pośrednictwie Rady Stanu nie masz wzmianki».
- ²²⁷ Taking however an opposite stance that Wicenty Niemojowski, this deputy (Dembowski) stressed that «this very project prescribes the means to achieve such responsibility, which was expected in vain for the lack of legally determined way of conduct for the last five years» (ivi, p. 320: «projekt ten właśnie przepisuje środki, do osiągnięcia tej odpowiedzialności, która przez pięć lat na próżno była oczekiwaną dla braku wskazanego prawem sposobu postępowania»). He further stressed that «renouncing the intermediary of the king would overthrow the infallibility of the ruler, whose person is above all the storms and who cannot be attached to the Ministers if they were infringing [the legal order]» (ivi, p. 321: «opuszczenie pośrednictwa Królewskiego obalałoby nieomylność Panującego, którego osoba jest wyższą nad wszystkie burze i niemogącą być przywiązaną do Ministrów, gdyby byli wykraczającymi») and further added that the accusations of the Ministers, as being made publically, «cannot be suppressed by the State Council», (ivi, p. 322: «[...] przez Radę Stanu przytłumionemi być nie mogą») and that even if the State Council would make opinions in this respect, “nothing detrimental could result from it since the Senate considers the charges and decides over it” [Dziennik posiedzeń...: “nic stąd szkodliwego wyniknąby nie mogło, skoro Senat zaskarżenia rozstrząsa i rozstrzyga»].
- ²²⁸ Deputy Wincenty Niemojowski, ivi, part I, p. 344: «Odpowiedzialność ministrów nie tylko broni praw Ludu, lecz jest oraz najmocniejszą tarczą Panującego, zabezpiecza Jego spokojność, i zapewnia Jego sławę».
- ²²⁹ The view that art. 157 is incompatible with the Constitution was expressed i.a. by deputy Szołowski [ivi, p. 327].
- ²³⁰ Ivi, part I, p. 324, in original: «Senat miał prawem przepisana drogę, która do wymiaru sprawiedliwości w tak głównych przestępstwach prowadzi».
- ²³¹ Ivi, part I, pp. 325-326, in original: «największą [...] na przekraczających Ministrów karą jest onych na żądanie Narodu oddalenie».
- ²³² Ivi, part I, p. 329.
- ²³³ Minister Mostowski, ivi, part I, p. 342, in original: «obecna chwila mówił: iest chwilą dobiiania się Ludów o swobody swoje, o to, co zowiemy Konstytucją” and „powinniśmy dać z siebie wzór umiarkowania».
- ²³⁴ Minister Mostowski, ivi, part I, p. 349, «gdzieindziej, dlatego że wymagano za wiele, postradano posiadane swobody».
- ²³⁵ Ivi, part I, p. 352, where the deputy stated: «Article 57 of the Constitution, stating: “that those regulations, which pertain to putting clerks on trial shall be executed immediately” – is a sufficient and satisfying guarantee that the smallest procrastination cannot take place» [in original: «Artykuł 57 Konstytucji mówiąc, “Ze te postanowienia, które się tyczą oddania pod Sąd urzędników niezwłocznie wykonywanemi będą” – jest nader dostateczną i zaspokajającą rękojmią, że najmniejsza zwłoka mieysca mieć nie może»]. By the way, it has to be remarked that reference to article 57 is a printing error, since it in fact it is article 75 of the Constitution which addresses this issue. Other deputies pointed to the fact that if the government did not want any responsibility, it would not present a project in this respect, cfr. deputy Krasieński, ivi, p. 361.
- ²³⁶ Ivi, part I, p. 356, in original: «przyjęcie tego projektu uwolniłoby Ministrów od odpowiedzialności [...] w krajach, w których Ministrowie Monarchom tylko są odpowiedzialnemi, tam ich nadzucia i zła Rada pospolicie kara-
- nemi nie bywaią».
- ²³⁷ Ivi, part I, p. 357, in original: «Artykuł ten nayważniejszą narodu prerogatywę obeymuie: bo zasłania go od wszelkiej samowolności Władzy Administracyjnej».
- ²³⁸ Ivi, part I, p. 364, in original: «w wykroczeniach wyższych urzędników i w razach zgwałconej Konstytucyi, wyrokować maią».
- ²³⁹ Deputy Wierzbowski, ivi, part I, p. 375, in original: «próżna iest obawa utracenia odpowiedzialności Ministrów, bo Monarcha czuły i troskliwy nie spuści z bacności, aby wykroczenia wyższych urzędników bezkarnie nie uchodziły».
- ²⁴⁰ The charge that the project did not include such persons was brought about by deputy from Warsaw, Mr Linde. Eventually however the view prevailed that the project respected the meaning of the art. 82 of the Constitution, cfr. the speech of L. Plater, ivi, part I, p. 377.
- ²⁴¹ Ivi, part I, p. 391.
- ²⁴² Ivi, part II, p. 14, in original: «o Kontrasygnowanie postanowień Rządu przez samych Ministrów z wyłączeniem Radców Stanu, takowe w zastępstwie Ministrów podpisujących».
- ²⁴³ Ivi, part II, p. 64, in original: «Poseł Powiatu Kaliskiego Niemojowski, oświadczył: że składa zaskarzenie u Laski przeciw Ministrowi Obrzędów Religijnych i Oświecenia publicznego Potockiemu i Rady Stanu Staszcowi o kontrasygnowanie postanowień administracyjnych z dnia 22. Maia i 16 Lipca 1819 roku, podciągających pod cenzurę naprzód pisma perypodyczne, a następnie wszystkie inne bez wyjątku dzieła».
- ²⁴⁴ Ivi, part II, p. 66. The statements of the Marshall appear to be also relevant in the view of the fact that he confirmed that it happened here for the first time, in original: «Marszałek po nieiakiem zastanowieniu się oświadczył».
- ²⁴⁵ Ivi, part II, p. 67. As the result of it we do not have information how this debate looked like.
- ²⁴⁶ The reasons for such a situation

- were possibly diverse: on the one hand the very formulations of art. 157 posed an obstacle to debating such motions freely, as they could be proceeded only after all the previous agenda had been accomplished – what was combined with the temporal limitations of the Sejms, which according to the Constitution shall not last for more than 30 days (cf. art. 87 of the Constitution), secondly, the intimidating effect of the presence of tsar, whom the majority of the deputies feared to offend, like was the case in the year 1825, played its role.
- ²⁴⁷ Protokół posiedzeń Izby Poselskiej z miesiąca Czerwca 1830 roku, Warszawa 1831, p. 301. In this last case it concerned not the ministers, but the senators who were part of the Sejm's delegation responsible for collecting evidence during the Sąd Sejmowy, cf. considerations above.
- ²⁴⁸ *Ibidem*.
- ²⁴⁹ A closer analysis of this debate has not been conducted so far, a brief reference to it has only been made by Witkowski, *Uwagi o urzędzie ministra* cit., p. 262.
- ²⁵⁰ Deputy Stanisław Jezierski, Protokół posiedzeń Izby Poselskiej cit., p. 302, in original: «Nie-uniwinniający bynajmniej oskarżonego, wolno się zastanowić, czyli skarga ta onawiając ranę w sercu Najjaśniejszego Pana, więcej złego niż dobrego nie przyniesie». It was echoed by deputy Świniarski, *ibidem*: «Yet the accusations, no bringing any success, by a sad recollection would only irritate the heart of the king, so in my view it would be better to be silent of that», in original: «lecz bez żadnego pozostawszy skutku, smutnem wspomnieniem rozdrażniłyby tylko serce Najjaśniejszego Pana; mojem przeto zdaniem: lepiejby je przemilczeć».
- ²⁵¹ Deputy Szymkiewicz, *ibidem*, in original: «wypada, abyśmy w naradach naszych ostrożnie działali, Ostrzegam Izbę!».
- ²⁵² Sejm Marshall, *ibidem*.
- ²⁵³ Ivi, p. 303.
- ²⁵⁴ Deputy Świdziński, *ivi*, p. 303.
- ²⁵⁵ Deputy Ledóchowski, *ibidem*.
- ²⁵⁶ Deputy Świdziński, *ivi*, p. 305.
- ²⁵⁷ Deputy Grąbczewski, *ivi*, pp. 304–305, who highlighted the fact that the «very beginning of the voting [upon the motion] will be a punishment for Woźnicki», in original: «Żądamy, aby dowody były złożone, nim przystąpimy do wotowania. Samo bowiem przystąpienie do niego, będzie karą dla Woźnickiego».
- ²⁵⁸ Deputy Świdziński, *ivi*, p. 305, in original: «jest nadto czynić sobie igraszkę z prawa» and «jest to dowolnym domysłem wyzuwać Izbę z niewątpliwego prawa skarżenia urzędników».
- ²⁵⁹ Deputy Ledóchowski, *ibidem*.
- ²⁶⁰ Deputy Szaniecki, Deputy Ledóchowski, *ivi*, p. 304.
- ²⁶¹ Deputy Ledóchowski, *ibidem*.
- ²⁶² Deputy Grąbczewski, *ibidem*.
- ²⁶³ Deputy Gustaw Małachowski, Deputy Ledóchowski, *ivi*, p. 302, in original: «i jak na nieszczęście przyzwyczajeni jesteśmy widzieć prawa nasze przestępowane przez Ministrów, nigdy zaiste niewidzieliśmy tak ważnego przekroczenia, jakiego się dopuścił oskarżony Woźnicki».
- ²⁶⁴ Ivi, p. 307.
- ²⁶⁵ Ivi, p. 308, in original: «łatwo jest pod sąd oddać i usunąć ministra, ale nie łatwo jest go zastąpić».
- ²⁶⁶ What is absolutely surprising is the fact that Mr Szaniecki goes so far as to say that Prince Lubecki indeed did infringe the Constitution, but «he did it for our benefit» (*ivi*, p. 309, in original: «książe minister zgwałcił zasady konstytucji dla naszego dobra»). Very interesting is also a comment made by Mr Postużyński that «not the substantial evidence forms the principle of the accusation, but the public opinion and it has not condemned the prince minister» (*ibidem*, in original: «nie materialne dowody stanowią zasadę oskarżenia, lecz opinia publiczna, ta niepotępiła księcia ministra»).
- ²⁶⁷ Like the deputy Biernacki, *ibidem*, concluding that: «this minister has manifested indifference towards the Constitution by signing decrees which are totally contrary to it: this is the act upon which the Chamber shall judge», in original: «[...] minister ten okazał obojętność swoją dla konstytucji, podpisując dekreta zupełnie jej przeciwne, to jest czyn, ten sądzić I o tem Izba radzić powinna».
- ²⁶⁸ Ivi, p. 311. In conclusion of his motion Sołytk stressed that the behavior of minister Grabowski constituted a crime according to art. 97–99 of the 1818 Criminal Code, in original: «nikt, nawet sama prawodawcza władza nie może zmieniać zasadniczych zarządzeń konstytucji, takie zarządzenie obejmuje art. 16, zapewniający wolność druku».
- ²⁶⁹ Ivi, p. 313, in original: «Minister Grabowski, nie pozbawił nas wolności druku, bośmy jej przed kontrasygnacją powołanego tu postanowienie nie mieli».
- ²⁷⁰ Deputies Kaczkowski and Biernacki, *ivi*, p. 314, in original: «wina jest zawsze winą i poszukiwaną zawsze być powinna» and further „minister powinien postępować drogą konstytucyjną, jeżeli zaś jej się trzymać nie chcą lub nie może sumiennie postępując od urzędowania w tenzas usunąć się winien».
- ²⁷¹ Ivi, p. 315, in original: «skarga podana przez pośta powiatu Kaliskiego bez decyzji pozostała».
- ²⁷² Cfr. e.g. J. Kahn, *Federalism, Democratization, and the Rule of Law in Russia*, Oxford 2002; W. Graf Vitzthum, *Recht in Russland*, «Juristenzeitung» 2017, (18), pp. 853–858. It is not the objective of this study to dwell into the broad topic of the Russian attitude of law as a whole, an issue surely requiring a separate monumental work, but to make some generalizing remarks in the light of the facts that have been observed above.
- ²⁷³ Cfr. L. de Hartog, *Russia and the Mongol Yoke: The History of the Russian Principalities and the Golden*

Horde, 1221-1502, London 1996.

- ²⁷⁴ I personally consider to be very informative a view presented by A. Yanov (*The origins of Autocracy: Ivan the Terrible in Russian History*, London 1981, pp. 91-92) that there existed a decisive difference between «Oriental despotism of Western Europe» and the Russian case as those firsts did not: «know the fundamental facts of serfdom and universal service».
- ²⁷⁵ Ivi, pp. 101-102. W. Zimmerman, *Ruling Russia: Authoritarianism from the Revolution to Putin*, Princeton 2014, pp. 1-8.
- ²⁷⁶ Quoted after Gąsiorowska, *Wolność druku w Królestwie Kongresowym* cit., p. 2, in original: «Monarcha nie uważa bynajmniej dobrodziejstw, jakimi kraj obyspał, za nieodwołalne; urządzenie Królestwa traktuje jako obowiązujące dla narodu, lecz nie dla siebie; w umowie nadanej swym poddanym jest sędzią i stroną; zobowiązania wypełniać będzie o tyle jedynie, o ile w swej mądrości uzna je za zgodne z dobrem narodu».
- ²⁷⁷ I provide this information according to Przelaskowski, *Sejm warszawski roku 1825* cit., pp. 75-79, who refers himself to a very valuable, yet unavailable to the author of this text article of Pisarskiej, *Iz istorii Carstwa Polskago pri Aleksandre I*, Naucznyje Izwiestija, Smoleńsk 1926, pp. 37-48 (reviewed and discussed by H. Więckowska, «Kwartalnik Historyczny» 1927, vol. XLI, pp. 354-359) publishing sources of those drafts and memorials.
- ²⁷⁸ Przelaskowski, *Sejm warszawski roku 1825* cit., p. 77.
- ²⁷⁹ Čwietajew, *Russkaja Starina*, vol. 121, p. 601 (Russian translation) information provided and quoted in ivi, p. 79.
- ²⁸⁰ Cfr. the statement of P.S. Wandycz (*The Lands of Partitioned Poland 1795-1918*, Wahington 1996, p. 77) who in the year 1975 wrote: «Alexander seemed genuinely interested in the liberal experiment in the kingdom. He visited Warsaw

almost annually and wanted to use the Poles as an element to transform his empire». Yet further, commenting upon the position of Duke Constantine: «From the beginning his position was extra-constitutional, and indicated that Alexander refused to be bound by the charter if it did not suit his purposes». The same view has been expressed by J. Berest, *The Emergence of Russian Liberalism: Alexander Kunitsyn in Context, 1783-1840*, New York 211, p. 63: «Alexander's support for restoring constitutional order in France and his granting of a constitution to the Kingdom of Poland in 1815 further strengthened his image as a liberal-minded monarch. As time went by however, liberals began to realize that despite all the gestures, Alexander did not wish to reduce his power as an autocrat in Russia [...]».

- ²⁸¹ A.J. Czartoryski, *Pamiętniki i memoriały polityczne 1776-1809*, Warszawa 1986, pp. 179, 223-228, 286, 318, 381, quoted in accordance with J. Skowronek, *Eksperyment liberalizmu parlamentarnego w Królestwie Polskim*, Przegląd Humanistyczny 1995, nr 3, p. 3.
- ²⁸² For this issue, cfr. e.g. considerations upon Eurasianism, an intellectual current in the Russian legal theory of human rights, described extensively by L. Mälkssoo, *The History of International Legal Theory in Russia: a Civilizational Dialogue with Europe*, «The European Journal of International Law», vol. 19, no. 1, 2008, pp. 231-232.
- ²⁸³ Dziennik Praw Królestwa Polskiego 1816, vol. II, p. 85, in original: «z daleka czuć nad dobrem wszem będę, z tąż samą stałością, z tąż samą troskliwością, i jedynym życzeń Moich przedmiotem będzie widzieć nadany Wam przemennie porządek, umiarkowaniem waszem ustalony».
- ²⁸⁴ Ivi, vol. II, pp. 83-84, in original: «Co do sposobów rozwinięcia i utwierdzenia Narodowych wa-

skich ustaw». From the tone of the speech however it can be inferred that the tsar spoke rather about the moral responsibility.

- ²⁸⁵ Ivi, vol. I, p. 172. On the other hand, no immediate repressions followed, but the next Sejm was convened only 5 years later.
- ²⁸⁶ It is interesting to note that the tsar Alexander did use certain excuses to justify his conduct. For instance, in 1824 through the proxy of Ignacy Sobolewski he conveyed the following message: «the tsar not being able to come within the current year to Warsaw to convene there the Sejm due to the need of visiting eastern provinces of his country», cfr. I Rada Stanu Królestwa Polskiego, AGAD Fonds 184, sign. 251, p. 215. It appears remarkable that the Russian tsar refers to Russia in formal correspondence: «country of his», implying an ownership relationship.
- ²⁸⁷ It is interesting to note the view that the Russian «peripheral provinces were laboratories where innovations could be tested before being applied to Russia», cfr. S.F. Starr, *Tsarist Government: The Imperial Dimension, in Soviet Nationality Policies and Practices*, ed. by J.R. Azrael, (New York: Praeger, 1978), pp. 29-30 quoted after D. Wolff, *To the Harbin Station: The Liberal Alternative in Russian Manchuria, 1898-1914*, Stanford 1999, p. 197.
- ²⁸⁸ I. e. since the foundation of Trybunał Koronny and Trybunał Litewski, what took place respectively in the years 1578 and 1581.
- ²⁸⁹ Even though there are cases known when the final decisions of the Sejm Court, which occasionally confirmed the judgments of the supposedly final decisions of the Trybunał Koronny were illegally changed by king, what especially pertained to the religious issues, like in the year 1609 in the cases concerning the disturbance of public peace, cfr., T. Kempa, *Trybunał Litewski w obronie wolności wyznaniowej w końcu XVI i w*

pierwszej połowie XVII wieku. «Zapiski Historyczne» 2011, issue 2, p. 38, it remained an exception.

²⁹⁰ Cfr. a very clear statement made in the "Report on the relationship between political and criminal ministerial responsibility", adopted by the Venice Commission at its 94th Plenary Session (Venice, 8-9 March 2013) (Study No. 682/2012), p. 16: «There are two different basic models in European constitutional law for holding government ministers criminally responsible. One is to leave this to the ordinary criminal system. The other is to have special impeachment rules, which may be construed in a number of different ways, and may cover both the initiation of proceedings, the composition of the court and other procedural elements. [...] The Venice Commission is of the opinion that both alternatives should as such be considered legitimate, and that both form part of the European constitutional tradition».

²⁹¹ Even in one of the most spectacular impeachment proceedings that took place in the modern, post II World War western democratic tradition, namely against president Nixon following the Watergate scandal (1974), barely 7 out of 17 republicans in House Judiciary Committee Impeachment Votes consented to putting forward any kind of charges against the embattled president.

²⁹² It was given the name «Trybunał Stanu» (Tribunal of the State) – cfr. art. 51, 59 and 64 of the Polish March Constitution, *Dziennik Ustaw*. 1921 nr 44 poz. 267, available in internet under: <<http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=W-DU19210440267>>. A charge against the minister required a majority of 3/5 of the votes. The Constitution referred itself explicitly only to the constitutional responsibility – the stipulations concerning the criminal responsibility in front of the State Tribu-

nal were removed at the very last instance from the project of the 1921 Constitution, cfr. S. Krukowiecki, *Geneza konstytucji z 17 marca 1921 r.*, Warszawa 1977, p. 290.

²⁹³ At this point I would like to express my sincere gratitude to Prof. Dr Andrzej Dziadzio who pointed my attention to the fact that there has been a crucial discontinuity between the idea of a parliamentary Court competent for adjudicating the cases of ministerial responsibility and notion of a separate Court beyond parliament competent in this respect as it was settled in the 1921 Constitution, following the model adopted in Austrian Empire by the law of 1867 (cfr. in this respect DZIADZIO, *Monarchia konstytucyjna w Austrii*, Kraków 2001, pp. 38-41). Indeed, the regulation of this Austrian law established a principle that constitutional responsibility [(cfr. § 3 of Gesetz vom 25. Juli 1867 über die Verantwortlichkeit der Minister für die im Reichsrathe vertretenen Königreiche und Länder, in *Reichs-Gesetz-Blatt für das Kaisertum Österreich*, Jahrgang 1867, XXIX Stück, p. 209: «alle in die Zeit ihrer Amtsführung fallenden Acte der obersten Regierungsgewalt») criminal acts of the ministers which were related with their ministerial function (cfr. § 8 of Gesetz vom 25. Juli 1867, p. 209: «§ 8 Jedes der beiden Häuser des Reichsrathes kann auch straffbare Handlungen der Minister, welche unter das allgemeine Strafgesetz fallen, soweit dieselben mit den öffentlichen Funktionen des Ministers in Verbindung stehen, zum Gegenstande der Anklage machen»)] could be adjudicated by a special Court, Staatsgerichtshof, composed of twelve citizens versed in law chosen by each Chamber (cfr. § 16 of Gesetz vom 25. Juli 1867: «zwölf unabhängige und gesetzkundige Staatsbürger», ivi, p. 210). Nonetheless two issues shall be stressed: firstly, that the members of such tribunals were to be chosen by

the parliamentary majority, which makes it hardly an apolitical body. Secondly, even during the constitutional debate in Poland before accepting the Constitution from 17.3.1921 various presented drafts still followed the idea that responsibility of the ministers is to be realized by higher Chamber- Senate- cfr. NA, NA, *Projekty Konstytucji Rzeczypospolitej Polskiej*, Warszawa 1920, pp. 11, 77, 149 (the drafts accepting the competence of Tribunal of State, both of them prepared by the governamental commissions): 103, 205 [the drafts accepting the competence of Senate). It is to be stressed that in the governamental projects, establishing the State Tribunal, especially in the project from 1.11.1919 (ivi, pp. 11-35) whose article 62 became subsequently identical with art. 64 of the accepted Constitution, there was no higher Chamber (Senate) in a proper sense. Therefore, I think it might be hard to defend the thesis that the State Tribunal was of Austrian inspiration while in fact it seems to be an outcome of political compromise and a perspective of earlier drafts.

²⁹⁴ Also here the responsibility of the ministers required a majority of 3/5, yet this time of the combined Chambers, cfr. art. 30, *Ustawa konstytucyjna z dnia 23 kwietnia 1935 r. Dziennik Ustaw Rzeczypospolitej Polskiej z 1935 r.*, nr 30, poz. 227.

²⁹⁵ In Polish: «Wojskowa Rada Ocalenia Narodowego [WRON]».

²⁹⁶ A statement quoted after K. Niewiński, *Geneza i pozycja ustrojowa Trybunatu Stanu w PRL*, «Miscellanea Historico-Iuridica», 2013, vol. XII, p. 295.

²⁹⁷ *Ustawa z dnia 26 marca 1982 r. o Trybunale Stanu Dz. U. Nr 11, poz. 84, Ustawa z dnia 26 marca 1982 r. o zmianie Konstytucji Polskiej Rzeczypospolitej Ludowej (Dz. U. Nr 11, poz. 83. Cfr. also Niewiński, Geneza i pozycja ustrojowa Trybunatu Stanu w PRL cit., p. 298).*

²⁹⁸ It is extremely characteristic that

until now the same law: Ustawa z dnia 26 marca 1982 r. o Trybunale Stanu (Dz. U. Nr 11, poz. 84) governs the rules for constitutional liability and it has only been amended 10 times. As Mirosław Granat rightly stated already in the year 2005, the lack of substantial changes in the model of the organization of Tribunal of State was related primarily with the lack of will of the persons responsible for drafting constitution to ensure an effective constitutional and criminal responsibility of power, cfr. M. Granat, *Normatywny model odpowiedzialności konstytucyjnej w praktyce* in: *Sądy i Trybunały w Konstytucji i w praktyce*, Warszawa 2005, pp. 139-140, who fully rightly stated: «in our realites the requirement of the participation of Sejm in making a deputy constitutionally responsible [...] is a dysfunctional factor». The same author also highlighted a totally correct view that constitutional and criminal responsibility is fictitious without having parliamentary majority which «in practice protects the majority before the risk of facing constitutional responsibility», what according to this author breaches the principle of equality as to the law (ivi p. 141).

²⁹⁹ B. Opaliński, *Trybunał Stanu w polskim porządku ustrojowym. Zagadnienia wybrane*, Przegląd Prawa Konstytucyjnego 2011, iss. 2, pp. 118-119.

³⁰⁰ Dominik Jastrzębski and Jerzy Ćwiek, following so called alcohol scandal, both sentenced to relatively mild sentences of 5 years prohibition of exercising passive vote rights and higher offices. One further case concerns Emil Wąsacz, a minister in the year 2005, is still pending. Cfr. ivi, p. 129.

³⁰¹ This however requires a free media with plurality of views and freedom of expression.