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Abstract of the doctoral dissertation entitled:

***Parliamentary non-accountability as an immanent element
of the Polish constitutional tradition***

The doctoral dissertation considers the issue of the essence of the parliamentary non-accountability in the light of the of native perspective of the Polish constitutional tradition. The primary objective of the doctoral dissertation is based on the assumption of the fundamental importance of the tradition and historical experiences of the nation, its political ideas, in shaping the particular constitutional institutions of the political system. No constitution is created *ex nihilo*, it always refers to the existing socio-political situation at the time of its creation and subsequent enactment. The doctoral dissertation remains in line with the concept of originalism, the premises of which are also not unfamiliar to Polish dogmatics of the constitutional law.

So far studies for originalist essence of the particular Polish constitutional institutions are not advanced. Lack of consideration of the fundamentals on which individual constitutional institutions are built is particularly visible with regard to the institution of the parliamentary non-accountability. Mostly researches having this institution as their subject considers the issue of the scope of its regulation with regard to its coverage of the so-called professional activities of a Deputy of a Senator both within the relevant chamber and outside it. However, these studies are highly of the practical nature, they seem to being conducted as if in limbo without a strong theoretical foundation, which may lead researchers to draw drastically different conclusion, even ones that undermines the essence of the institution under analysis.

Polish constitutional system from its enactment was strongly infused with the high dose of parliamentarism. However, the medieval England is widely considered to be the cradle of parliamentarism. It is also perceived as the source of the institution of parliamentary immunity. Yet both, Polish and English political systems were founded on the principle of the freedom of expression, especially, freedom of political expression. They also had separately developed, through tradition, two basic guaranties of the performance of the representative mandate: non-accountability and inviolability.

The second widely considered as the source of the institution of parliamentary immunity is the France of the Revolution of 1789. Unlike in Poland and England, adoption of the parliamentary immunity in France was based on the sovereign decision of the National Assembly, rather than on custom of the French nation. Similarly like in France, the institution

of the parliamentary immunity in German states was not developed through the tradition of the initially individual German nations, and then the unified German nation, but through adoption of the French model of the parliamentary immunity.

The system of the Republic of Nobles was based on the assumption of the freedom of the political expression of the representatives of the political nation. Nobles attending the Sejm and Sejmiks enjoyed full freedom of political expression with regard to uninterrupted voice. The right of "free voice" remained absolute as it was not subject to any restriction from the other nobles and the Chamber of Nobles. The nobles attending Sejm and Sejmiks were fully unaccountable for their political expression as well as protected from attacks aimed at their freedom of political expression. This right was separate from the right of *liberum veto* and survived its abolition as the cardinal right of all nobles attending Sejm and Sejmiks. The right of "free voice" was perceived as the one of fundamental elements of the constitutional system of the noble's democracy. This led to the conclusion that the institution of parliamentary non-accountability in the Polish constitutional system has its own native origins in the institution of the "free voice" developed based on the petrification of the custom of free deliberation of the nobles attending Sejm and Sejmiks during the period of the Republic of Nobles.

Determination of the existence of the Polish model of parliamentary non-accountability, as in its essence absolute, sets grounds for interpretation of this institution in Poland after it regained its sovereignty and independence in 1918. The parliamentary non-accountability derived from the "free voice" appears as the immanently bounded to principles of sovereignty of the nation and republic form of the government. It ensures that the desired political system of the state be maintained as servient to the Polish nation which holds supreme authority over it. This also should be reflected in preferred method of interpretation of the provisions of law determining the parliamentary non-accountability enjoyed by members of the parliament within the scope of performing representative functions.

Close association of the institution of parliamentary non-accountability to the fundamentals of the political system of the state of the Polish nation requires adoption of the following specific objective of the doctoral dissertation, which is determination of the influence of the political system and form of the government in the Polish state at subsequent stages of its existence on the form of adopted institution of parliamentary non-accountability.

The last objective of the doctoral dissertation is determination of the role which the parliamentary institution plays in guaranteeing the proper and independent performance of

the representative mandate and, subsequently, determination of a possible link between parliamentary immunity and the type of the mandate held by members of the parliament.

The objectives of the doctoral dissertation determines the area of interest of the considerations. However, they requires to be specified in individual research problems. Formulating research problems requires that the researcher provide preliminary answers before commencing scientific work. Verification of research hypotheses constitute then the summary of the doctoral dissertation, provided after description of the conducted research and considerations made on their basis.

The research was presented in five chapters. The first chapter, placed after introduction to the doctoral dissertation, considers theoretical issues concerning parliamentary non-accountability. Therein the basic concepts regarding institution of the immunity in large, as well as it specific form of parliamentary immunity are being presented. Also the subject matter of the parliamentary non-accountability, constituting one of three elements of the parliamentary immunity, is being considered especially with regard to its consequences on the grounds of the specific branches of law.

The second chapter of the doctoral dissertation presents the already discussed institution of the “free voice” recognized as the prototype of the parliamentary non-accountability in the Polish constitutional tradition. Determination of the autonomy and independence of the institution of the “free voice” from the other two models of the parliamentary immunity formed in the medieval England and the France of the period of 1789th Revolution is carried out based on the comparison of these institutions and their development in this countries. The comparative studies also include considerations regarding adoption of the parliamentary immunity in the political systems of German states and subsequently in the political system of the unified German federal state. Therein, adopted model of the parliamentary immunity was based on the French model of this institution imposed during the period of French expansion over the Europe at the turn of the 18th and the 19th centuries.

The third chapter of the doctoral dissertation focuses on the historical analysis of the institution of the parliamentary non-accountability as a guarantee of the proper performance of the mandate in revived Polish state after 1918. Firstly, the models of the parliamentary immunity adopted based on the decree of the Temporary Heah of State implemented the French model of this institution, which significantly deviated from Polish tradition regarding parliamentary non-accountability of members of the parliament, as well as the function of the Legislative Sejm as constituent assembly of the Polish Nation. Therefore, the Legislative

Sejm, just after its convening, adopted the broadest model of the parliamentary non-accountability, known during existence of the contemporary Polish state. With the adoption of the March Constitution of 1921, the parliamentary non-accountability was adapted to the function of the Sejm and Senat as legislative bodies. Subsequent transformation of the political system of the Second Republic of Poland in the direction of authoritarian state with presidential form of government entailed further limitation of the parliamentary non-accountability linked to the simultaneous weakening of the systemic role and importance of the legislative bodies.

The fourth chapter of the doctoral dissertation presents socialist view on the guaranties of proper performance of the mandate of the member of the parliament. Imposition of the socialist political system on the Polish state after Second World War was based on the premise of rejection of the April Constitution of 1935, as the act illegal and fascist with simultaneous revive of the basic tenets of the March Constitution of 1921, which entailed subsequent reinstation of the parliamentary non-accountability adopted therein. Further adoption of the Constitution of the Peoples Republic of Poland of 1952 resulted in depriving Deputies of the parliamentary non-accountability that they had previously enjoyed. This chapter of the doctoral dissertation also presents the grounds for this constitutional decision, as well as the contradiction between the institution of parliamentary non-accountability and the objective of adopting a fully socialist system in the state, with related principles of the dictatorship of the proletariat and the people's democracy.

The fifth and last chapter of the doctoral dissertation consist of analysis of the parliamentary non-accountability as a constitutional institution in the Third Republic of Poland. Therein the assessment of the influence of the political transformation on the status of Deputies and Senators is being carried out. By the Constitutional Act of 1992 the parliamentary non-accountability was again reinstated in the Polish political system. Although the temporary nature of this Constitutional Act, in this chapter arguments in favour for its recognition as the first constitution of the Third Republic of Poland are being presented. Finally, regarding adoption of the premises of the concept of originalist interpretation of the constitution, works on creation and development of the Constitution the Republic of Poland of 1997 during long legislative process are analyzed in detail, which provides final grounds for determining the proper interpretation of the institution of the parliamentary non-accountability adopted in its Article 105 Section 1.