

The Minister of Justice seems to be one of the state institutions with the longest traditions in the political system. It constitutes a constant part of the executive power (the government). Its origins date to the office of the Chancellor of the Kingdom, who – on behalf of the monarch – headed the chancellery, supervised the royal legislation and its correct implementation, presided – in place of the sovereign – over proceedings of the royal courts and ensured the proper functioning of the judicial system. Thus, he played a crucial role in creating the law and maintaining its observance by the courts. The Chancellor was one of the most influential officials of the state. His position was derived from the sovereign power of the monarch, which also included Justice, as it was commonly believed that “All Justice comes from the King.” In practice, the king personally resolved only those cases that concerned the interests of the Crown; other disputes between royal subjects were dealt with on his behalf by the chancellery and the royal courts presided over by the Chancellor.

Since absolute monarchies collapsed and modern constitutional democracies were established, the concept of the exercise of judicial power has profoundly changed. According to the European constitutional tradition and international standards of human rights, cases concerning the rights and obligations of citizens, as well as disputes between them, are to be resolved by the courts, which will – as a separate branch of power – be independent of both the legislative and executive power. It is essential that judges be independent from any influence of other state officials, including the head of state and the Minister of Justice. Taking into account the principles governing each democratic state, such as the separation of powers or the independence and autonomy of the courts, the question arises whether it is still reasonable to maintain the institution of Minister of Justice as a state organ responsible for matters relating to the judicial system. What is more, it is questionable whether the existence of this institution is at all compatible with modern constitutional standards.

This question is not hypothetical. In many countries (for example, in France) there is a clear tendency to reduce the impact of Ministers of Justice on the judiciary systems. At the same time, the powers of self-government judicial bodies are increasing. There are also tendencies to make the status of prosecutors closer to that of judges (particularly in respect of their independence from other public bodies). Sometimes, however, changes are occurring in exactly the opposite direction. This is happening in Poland, where the Office of Attorney General has been once again integrated with the Ministry of Justice and the Minister of Justice has been equipped with powers allowing him to direct the work of prosecutors, as well as strengthening his supervisory role over the administrative activity of the courts.

The objective of the project is to determine the justification, if any, for the existence of the institution of Minister of Justice in modern constitutional democracies. This requires a scrutiny of the relevant constitutional solutions adopted by countries with relatively long and stable democratic traditions. Within the frame of the project, the provisions contained in the constitutions and other normative acts concerning the role of Ministries of Justice (in force in selected European countries, such as Austria, France, Germany, Ireland, Italy and the United Kingdom) will be analysed. The research will include the case law of constitutional courts and other high courts, as well as jurisprudence. For each of the countries taken into consideration, a separate report will be prepared to detail various issues regarding the functioning of Ministries of Justice, namely the scope of their impact on judicial systems (the appointment, professional training and evaluation of judges; the enforcement of their disciplinary responsibility; the creation and abolition of courts and judicial districts and supervision over the so-called administrative activity of the courts), their prerogatives related to the prosecutor's office (the issue of procurators' independence), the supervision exercised by Ministers of Justice over the functioning of self-governments of lawyers and other legal professionals and, finally, their role in the legislative process concerning court systems and judicial proceedings. On the basis of the comparative analysis, a contemporary model (or models) of the institution of Minister of Justice will be established. It will serve as a basis for assessing the relevance and effectiveness of Polish solutions adopted in this field.