

QUESTIONE GIUSTIZIA



The principles of the division of legislative, executive and judicial powers, and of the balance among them, are crucial elements which constitute a democratic rule – of – law state. Most of modern constitutions provide that these principles are to be respected. The constitutional regulations themselves are not sufficient as the decisive factor for effective implementation of these rules is usually a proper legal regulation contained in lower acts defining relations between the powers in a specific manner.

The recent developments show a widespread tendency to unify the legislative and executive power on one side, and to leave judiciary aside. The role of national parliaments is constantly decreasing, as the decision – making process is vested with governments created by parliamentary majority. After this initial moment of supremacy of the legislator, the real power stays with the governments, while the role of the parliaments is often limited to affirming the governmental policy, and to serve as a forum for discussion and exchange of ideas. Parliamentary initiative to propose drafts of law is often very limited, and even if it is still realized, usually it is not effective as no draft can become the law without consent of the government. This tendency may be dangerous and may lead to the omnipotence of the executive power on one side, and marginalization of the legislative on the other side. This process seems difficult to be stopped or reversed, if it is possible at all.

The process of gradual merging of executive and legislative powers should be counterbalanced by the strong and independent judiciary. Only such can effectively protect an individual against the omnipotence of the combined powers. Common courts, which decide in individual cases, both civil and criminal, administrative courts competent to determine whether a decision issued by an administrative body is legal, and constitutional courts which assess the constitutionality of the law adopted by the parliament, shall constitute a system of safeguards.

On many occasions, the executive power tries to increase its influence on judiciary. In Poland, this is the Minister of Justice, the member of the government, who is responsible for supervision of administration of common courts, but without interference into the scope of judicial independence. His competences



in this field are determined by *the Law on Courts*, which are further developed by regulations issued by the Minister of Justice, if there is an authorization to do so. The intercourse between judges and the Minister is usually very tense as the government tries to strengthen the influence of the executive power on the judiciary. This tendency, which may endanger judicial independence, is usually justified with the need to guarantee that courts are effective, and cases are adjudicated without a delay, in a reasonable time.

The issue of the administrative supervision of the Minister of Justice over common courts in Poland has been assessed already few times by the Constitutional Court. In one of the first judgments related to this matter, dated 15 January 2009 (case number K 45/07), the Constitutional Court declared that the administrative supervision of the Minister of Justice over courts is generally allowed as not contradicting with the constitutional principle of separation of powers and judicial independence. In many subsequent judgments of the Constitutional Court, this approach has been further affirmed. Nevertheless, the Constitutional Court underlined that the sum of various, sometimes even minor competences of the Minister of Justice related to the supervision over court administration may finally result in the violation of the principle of the independence of judiciary.

At the beginning of 2014, Polish Parliament adopted the amendment to the *Law on Courts* by which the Minister of Justice received additional competences which were to guarantee more efficient supervision over the administration of courts. According to the amended law, the Minister was authorized to request access to files of all court cases, including the on - going ones. This solution was challenged by the President of Poland before the Constitutional Court as there were many doubts whether it did not violate the principles of separation of powers and judicial independence. This stance was supported by other institutions and organizations acting in the field of judiciary, such as *inter alia* National Council of the Judiciary of Poland, Polish Judges' Association, and Helsinki Foundation of Human Rights. The question was also supported by MEDEL – *Magistrats Européens pour la Démocratie et les Libertés*

In the judgment announced on 14 October 2015, Constitutional Court decided that the access of the Minister of Justice to court files hit the merit of judicial power and violated the principle of judicial independence. The Court underlined that the Minister had enough tools to realize his supervisory competences with regard to court administration. The principle of judicial independence covers all activities of a judge connected with a management of proceedings, and deciding in a case. The judge must be protected from any external interference into his actions, regardless of a stage of proceedings.



When the judge finds out that the files of the case which he/she conducts are sent to the Ministry of Justice, he/she must feel a kind of pressure which can influence on a decision.

In many cases when the constitutionality of provisions of the *Law on Courts* was challenged, the Constitutional Court declared that the Minister of Justice needed efficient tools to realize the competence to supervise court administration. Therefore, the judgment dated 14 October 2015 is so important because it is a rare situation when the Court imposed limits on the interference of the executive power into independence of the judiciary.