

tance in the light of a rise in the influx of the “yellow press” as well as films from Western countries. The SR was informed of an increasing concern regarding the depiction of violence in the media and its possible influence on the young. Greater public concern was also expressed with regard to pornography from abroad and its circulation under market conditions while, at the same time, acknowledging that pornographic films are increasingly being produced in Poland and exported to Western Europe.

The report refers to a provision in the Penal Code on sanctions for the dissemination of material “having a pornographic character” and cites information provided by the Minister of Justice, indicating that to date the prosecution of pornography has been rudimentary, in part because pornography remains undefined, with the courts having to consult experts to distinguish between permitted and prohibited acts. Provisions in the new Penal Code have also shifted the burden of proof from content to the form of presentation, meaning that responsibility arises when material is presented or distributed in such a way that persons unwilling to be exposed to pornographic images cannot avoid exposure, for example in the case of pornographic magazines in kiosks.

Additional concerns noted by the SR include, *inter alia*: the difficulties arising from the transition from a state monopoly over the media to a system governed by a free market, and the prevailing economic constraints; a need for the development of diverse media and the pre-eminent role played by foreign capital in the media industry as a result of the liberalization of the media market; infringements on the freedom of expression of journalists as a result of the interference of owners in editorials, particularly in such areas as attempts to reveal wrongdoing on the part of public officials, especially at the local level, because of fears of the negative impact of such coverage on future business relations.

The narrative on the Commissioner for Civil Rights Protections notes that the institution was established in July 1987 and mandated to: investigate breaches of the law and/or principles of community life and social justice arising from any action of omission by agencies, organizations or institutions responsible for compliance with, and implementation of, rights and liberties; act on the motion of citizens or their organizations, local governments and its own initiative; and to undertake a broad range of actions. The institution is powerful and not comparable to other institutions and has acted effectively in its basic function of educating the public; it has also proved effective in promoting the concept of the “constitutionalization” of thinking about law and generalizing use by the courts of international law; cooperation with the press is seen as extremely important; and its functioning had been marked by political and ideological neutrality and the promotion of the rule of law and human rights.

Points emphasized in the concluding observations, included: the perceived negative impact of liberalization

and free market forces on freedom of expression; internationalization of the media; the need for genuine editorial independence vis-à-vis political power and pressure exerted by private interest groups or public authorities; alleged restrictions on journalists’ freedom of access to information; the primary importance of the principle of the protection of sources for journalists; allegations of political influence in television, arising in part from the lack of independence of the National Broadcasting Council; the provision regarding Christian values in broadcasting; the increased level of violence on television and such matters as pornography, which have led to calls for restrictions; the fact that some liberties, in particular freedoms relating to communication, are often no longer perceived as opening possibilities but rather as dangers to the social fabric; and, with regard to the issue of insult and defamation, the absence of a proper legislative framework to guide journalists and protect individuals from undue attacks on their honour and dignity.

The report recommends that, *inter alia*:

- ♦ the government take all necessary steps to ensure the independence of the National Broadcasting Council (NBC), including through measures to ensure that appointments to the NBC are made in such a way as to guarantee its independence, with its members refraining from any interest — financial or political — that could impair their ability to discharge their duties in a fair and impartial manner;
- ♦ the government consider whether it is advisable to prohibit members of the NBC, on completion of their six-year term of office, from accepting a remunerated office in government;
- ♦ members of the NBC see themselves as independent trustees of the public interest in broadcasting, not as representatives of any special interest group;
- ♦ safeguards against any interference by political or financial interests in the work of the NBC be put in place;
- ♦ care be taken not to overemphasize the protection needed for public persons and institutions in the context of revising current legislation and adopting new rules, and due attention be given to the importance for a democratic society of allowing free political debate;
- ♦ due attention be given to the fact that public figures must expect to tolerate a greater degree of criticism than private individuals; laws or other provisions providing special protection against insult or criticism of government institutions, their members, officials, or the head of state be avoided;
- ♦ initiatives on the part of media professionals to establish independent and voluntary professional associations be encouraged, in particular with regard to developing methods and systems of voluntary self-regulation such as codes of conduct for the profession;