

**REPORT No. 72/11**  
PETITION 1164-05  
ADMISSIBILITY  
WILLIAM GÓMEZ VARGAS  
COSTA RICA  
March 31, 2011

**I. SUMMARY**

1. On October 17, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition presented by Carlos Manuel Serrano (hereinafter the “petitioner”), in representation of Mr. William Gómez Vargas (hereinafter “the alleged victim”), against the State of Costa Rica (hereinafter the “State” or “Costa Rica”). The petitioner held that the State is responsible for violation of the right to freedom of thought and expression, guaranteed in Article 13 of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), to the detriment of Mr. William Gómez Vargas, the Sociedad Periodística Extra, Limitada [Extra Journalistic Society, Ltd.], and Costa Rican society. The State alleged that the right in question had not been violated and that the petitioner is attempting to use the inter-American human rights system as a court of appeal to evade an obligation established by the courts of Costa Rica.

2. In accordance with the provisions of Articles 46 and 47 of the American Convention and Articles 30 and 36 of the Commission’s Rules of Procedure, and after analyzing the petition without prejudging the merits of the case, the Commission decided to declare the petition admissible with respect to the alleged violation of Article 13 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument. The Commission also decided to notify the parties of this decision, to publish it, and to include it in its annual report to the OAS General Assembly.

**II. PROCESSING BY THE COMMISSION**

3. The petition was presented on October 17, 2005, and registered with number 1164/05. On November 29, 2005, the Commission transmitted the pertinent parts to the State, giving it two months to submit its observations, as provided in Article 30.3 of its Rules of Procedure. The petitioner submitted additional information on January 23, 2006. On February 14, 2006, the State presented its reply, which was forwarded to the petitioner on February 16 of the same year.

4. The Commission received additional information from the petitioner on March 20, 2006, which was sent to the State on March 27, 2006; on November 15, 2006, which was sent to the State on February 12, 2007; on August 16, 2007, which was sent to the State on August 23, 2007; on November 1, 2007, which was sent to the State on November 30, 2007; on January 24, 2008, which was sent to the State on February 8, 2008; and on September 26, 2008, which was sent to the State on November 13, 2008.

5. The Commission received additional information from the State on May 16, 2006, which was sent to the petitioner on November 13, 2006; on September 24, 2007, which was sent to the petitioner on October 5, 2007; on December 21, 2007, which was sent to the petitioner on January 10, 2008; on March 6, 2008, which was sent to the petitioner on April 23, 2008; and on December 8, 2008, which was sent to the petitioner on March 5, 2009.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioner

6. The petitioner indicated that at the time of the events, the Repretel television channel was airing the popular program "A Todo Dar", which consisted of dances and contests with young models. On December 20, 2000, seven of the program's hostesses posed in bathing suits for a photo session at a hotel pool in the city of San José. The petitioner alleged that one of the photographs, taken for advertising purposes, had been doctored to put the models' faces on nude bodies of other women. The petitioner said that the montage had been made by an employee of the advertising agency hired to take the picture. The petitioner said the photograph circulated on the Internet beginning on January 10, 2001, and was sold in the streets of San José.

7. The petitioner alleged that on January 30, 2001, the newspaper Extra ran a story about the photo montage titled "Montage on the Internet with Girls from 'A Todo Dar.'" The petitioner said the front page of that issue carried the following text: "There is a full-blown scandal over the Internet posting of a montage [principal photo censored by the newspaper Extra] of the young women who work on the A Todo Dar television show broadcast by Channel 6. The faces were taken from an original photo (inserted below) and placed on bodies of nude women." On January 31, 2001, the following day, the newspaper Extra published a second article headlined "Repretel Intensifies Search for Those Who Bared the Girls from A Todo Dar."

8. The petitioner said both articles were written by journalist Gabriela Chaves Pérez, and that they had been printed with both the original photo and the montage (partially censored), explaining that the adulterated photo had been the object of a montage. The petitioner said that the printed version had added black spots to cover the breasts and genitals in the altered photograph, and that the purpose of the story had been to report the doctoring of the photo and its dissemination on the Internet, since the photo was already in the public domain. The petitioner added that the newspaper Extra had decided to print both photos to show which was the real one and which was the altered one. According to the information provided by the petitioner, the article of January 30, 2001 contained the following text: "What is certain in this case is that it involves a photo montage, made on a computer program, that took a photo of the girls dressed in bathing suits and changed them into nudes. Then it was e-mailed to the media and many people in all parts of Costa Rica, and the magic of the Internet had already sent the girls' picture beyond our borders."

9. The petitioner said that on August 24, 2001, the models filed criminal charges against reporter Gabriela Chaves, accusing her of libel because of the publication of the altered photo in the two articles she had written. They also filed a civil suit against the journalist and the Sociedad Periodística Extra, Limitada. According to the petitioner, the newspaper Extra is owned by the Sociedad Periodística Extra, Limitada, which has two shareholders, Mr. Willam Gómez Vargas and his wife Flory Cecilia Quesada Núñez.

10. The petitioner indicated that the domestic proceedings prior to the final judgment took place as follows: (a) on August 30, 2002, the Criminal Trial Court of the First Judicial Circuit of San José ruled that criminal action was statute-barred, so it exonerated reporter Gabriela Chaves and the newspaper Extra; (b) the plaintiffs filed an appeal for annulment, which was decided on November 14, 2003, by the Third Chamber of the Court, which nullified the judgment and remanded the case for new processing, because Article 7 of the Press Law provides imprisonment for these cases, and the statute of limitations had not expired; (c) the case reverted to the Criminal Trial Court of San José, which found Gabriela Chaves guilty of two counts of libel and sentenced her to time in prison, but commuted this sentence to a fine. The court ordered the reporter and the Sociedad Periodística Extra, Limitada, to pay the plaintiffs compensation of 28,000,000.00 *colones*, plus trial costs that were set at 1,890,000.00 *colones*.

11. After the courts of first and second instance dealt with the case, defense counsel for the reporter and the media company filed an appeal for nullification that was resolved by the Supreme Court,

which handed down a final judgment on August 5, 2005, acquitting reporter Gabriela Chaves of the criminal charges and ruling the civil damages suit against her without merit. In this verdict, the Supreme Court of Costa Rica said that although damage had been caused by publication of the photo, "it was unclear whether it was [the reporter] who had ordered the publication of the photographs." However, the petitioner said that the Supreme Court of Costa Rica had found that since it could not be proven that the reporter made the decision to publish the photos, the newspaper Extra, through the Sociedad Periodística Extra, Limitada, had subsidiary liability for the damage caused.

12. Consequently, the petitioner indicated that the Supreme Court upheld the civil award of 28,000,000.00 *colones* against the newspaper Extra, through the Sociedad Periodística Extra, Limitada, notifying the parties of this decision on September 1, 2005. It also ordered payment of 1,890,000.00 *colones* for costs. The petitioner alleged that the sentence imposed on the newspaper Extra constituted a restriction on the exercise of freedom of expression guaranteed in Article 13 of the American Convention. In the petitioner's opinion, the subsequent penalty for publication of the photograph was based on an ambiguous law; the grounds for the sentence were not duly explained; and the amount of the fine imposed was patently exorbitant.

13. The petitioner alleged that under Costa Rican law there is no appeal for review of the Supreme Court's judgment of August 5, 2005, so domestic remedies had been exhausted on that date.

14. The petitioner indicated that in the agreement between the plaintiffs and the advertising agency allegedly responsible for doctoring the photo, the amount of compensation had been set at 3,500,000.00 *colones*, an amount nearly nine times lower than the sum specified for damages to the detriment of the Sociedad Periodística Extra, Limitada.

15. The petitioner said that on January 16, 2006, he had made a deposit on the order of the Criminal Trial Court of 29,892,000.00 *colones*.

16. The petitioner argued that the public is interested not only in the actions of officials and politicians, but also in those of private parties that have voluntarily become figures of public note, especially artists and entertainers. The petitioner added that informing Costa Rican society about the photo montage and its circulation on the Internet is a matter of public interest.

17. The petitioner argued that the articles in the newspaper Extra had not violated the plaintiffs' privacy, because they had clarified that the photo posted on the Internet was false, and the facts reported were already a matter of public knowledge before their publication. The petitioner added that the visual content of the published photo had not been offensive, because there had been careful editing to use black spots to cover the private parts exposed as a result of the doctoring of the original photo.

18. The petitioner alleged that the Costa Rican courts' decision, and the State's response to the petition, had been based on the premise that publication of the altered photo had not been necessary to tell the story in the newspaper. The petitioner said it is not within the State's purview to decide or interfere with how the media decide to cover a story. In this regard, he said that the Costa Rican courts' action: (a) had usurped an editorial decision that was the sole responsibility of the newspaper; (2) had placed a disproportionate financial burden on the Sociedad Periodística Extra, Limitada and its legal representative, shareholder, and editor-in-chief William Gómez Vargas; and (3) had had an inhibiting effect on the newspaper's work. The petitioner argued that both civil and criminal penalties imposed for reporting the truth stifle the exercise of freedom of expression, and in order to impose subsequent liability, it is necessary to prove actual malice regarding the information published. However, the petitioner said that in this case the analysis of malice would not be necessary because the State's courts have recognized the veracity of the information.

19. The petitioner argued that payment of an exorbitant fine had been a financial blow to the newspaper and all its staff, especially its editor-in-chief and majority shareholder William Gómez Vargas. He said that the decision of the Costa Rican courts had attempted to establish how a media outlet should

cover a story and had punished the publication of a true fact in the public domain, which had not involved any deception, simply because they had considered it unnecessary to print the photo.

20. The petitioner said that the Sociedad Periodística Extra, Limitada is a limited liability company owned by Mr. William Gómez Vargas and his wife Flory Cecilia Quesada Núñez,<sup>1</sup> whose social capital is 10,000 *colones*. The petitioner added that the newspaper Extra is a joint, cooperative endeavor of 330 employees who have pooled their knowledge and labor to exercise the right to free expression. The petitioner said that an infringement on the basic rights of a corporation that owns a media outlet indirectly affects the rights of those who work there. The petitioner said that the media are standard-bearers of the right to freedom of expression, and Article 1.2 of the American Convention should be interpreted in that light.

21. On the matter of the Commission's *ratione personae* competence, the petitioner said that Mr. William Gómez Vargas had been a victim of violation of Article 13 of the American Convention for three reasons: he was the majority shareholder, the editor-in-chief, and the only agent and legal representative of the newspaper Extra. The petitioner said that Mr. Gómez Vargas had decided to exercise his right to freedom of expression by editing the newspaper Extra, which he and his wife own. In view of that, the petitioner said that limitations imposed on the newspaper because of editorial decisions made have a direct and immediate effect on his right to freedom of expression. The petitioner said that imposition of penalties for legitimate conduct have a strong intimidating and chilling effect on his future editorial decisions. Therefore, the petitioner argued that the Commission has *ratione personae* competence to consider the case with respect to Mr. William Gómez Vargas. Finally, the petitioner said Commission is competent because William Gómez, the newspaper, its reporters, and Costa Rican society are real victims who have suffered the direct and immediate consequences of illicit State action.

## **B. Position of the State**

22. The State confirmed the petitioner's assertion that the altered photograph had been circulated on the Internet before the newspaper Extra had published it. The State said the dissemination of the photo on the Internet had caused limited damage "among its users" and that additional dissemination of the photos in the newspaper Extra had caused greater damage to the honor and integrity of the models of the "A Todo Dar" show.

23. The State argued that although it was true that the text published in the newspaper articles had been true and had reported on the montage, publication of the altered photo had been unnecessary to report the facts, which constituted an abuse of the right to exercise free expression.

24. The State denied that the information reported had been a matter of public interest, because the plaintiffs, although popular figures, are not subjects of public interest as defined in Costa Rica's General Public Administration Act.

25. The State said that in Costa Rica the authority to establish limits on the right to information and freedom of expression comes directly from domestic law and the American Convention,<sup>2</sup> and that the civil penalty imposed on the Sociedad Periodística Extra, Limitada, had been strictly based on those limits. Moreover, the State argued that the petitioner is attempting to resort to the IACHR as an appeals court to escape an obligation imposed in a domestic judicial proceeding.

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<sup>1</sup> One of the notarized affidavits submitted by the petitioner says that on October 13, 2005, the capital of the Sociedad Periodística Extra, Limitada consisted of 100 common and nominative shares divided as follows: 25 shares owned by Mr. William Gómez Vargas, 36 shares owned by his wife, Ms. Flory Quesada Núñez, and 39 shares owned by Dunia Ugalde Cordero. Appendix V of the initial petition of the petitioners, received on October 17, 2005.

<sup>2</sup> Among the legal provisions governing this limitation, the State noted Article 47 of the Costa Rican Civil Code, which states: *Article 47. A photograph or image of a person shall not be published, reproduced, displayed, or sold in any way without the person's consent, unless such reproduction is warranted by the person's notoriety, the public position she or he holds, requirements of police or the judicial system, or when reproduction is done in connection with facts, occurrences, or ceremonies of public interest or that occur in public.*

26. The State said the Commission lacks *ratione personae* competence to consider this case regarding Mr. William Gómez. It argued that Mr. Gómez's exercise of his right to free expression had not been violated "because the only link to the alleged violation of that right is Mr. Gómez's position as legal representative of the Sociedad Periodística Extra, Limitada." It said that the alleged victim is not a natural person but a legal person, a figure not protected by the organs of the inter-American system.

27. The State said it is wrong to assert that the Costa Rican courts punished [Sociedad Periodística Extra, Limitada] for publication of a story, when in truth the only penalty imposed by the Criminal Annulment Chamber of the Supreme Court of Costa Rica is the civil penalty for publication of photographs that damage the honor and reputation of a group of models.

#### IV. ANALYSIS ON ADMISSIBILITY

##### A. The Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

28. Costa Rica has been a party to the American Convention since April 8, 1970, when it deposited its instrument of ratification.

29. In accordance with Article 44 of the American Convention and Article 23 of the IACHR Rules of Procedure, the petitioner is eligible to submit petitions to the Commission containing complaints of violations of rights established in the American Convention.

30. The Commission has *ratione materiae* competence because the petition refers to alleged violations of human rights protected in the American Convention. It has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in the American Convention was in force for the State when the facts alleged in the petition were said to have occurred. The Commission also has *ratione loci* competence to consider the petition, because it alleges violations of human rights protected in the American Convention, said to have occurred within the jurisdiction of a State party to that instrument.

31. The petition identifies the alleged victims as the Sociedad Periodística Extra, Limitada, Mr. William Gómez Vargas, and Costa Rican society in general. The State has challenged the status of the newspaper company and Mr. Gómez Vargas as alleged victims, stating, *inter alia*, that the IACHR lacks *ratione personae* competence because a corporation is not included in the protection afforded by organs of the inter-American system and Mr. William Gómez Vargas's right to freedom of expression was not affected.

32. With respect to the Sociedad Periodística Extra, Limitada, the Commission wishes to recall that the concept of person in Article 1.2 of the American Convention does not include legal persons. The Commission has stated that "complaints brought before it are inadmissible if they have been the subject of proceedings before the domestic courts on behalf of legal persons rather than individual victims, because the Commission lacks jurisdiction *ratione personae* to examine complaints referring to the rights of legal persons."<sup>3</sup> Nevertheless, the Inter-American Court has ruled that the mere fact that a right is exercised through a legal person does not necessarily exclude it from protection under the Convention.<sup>4</sup> The Court has observed that "in general, the rights and obligations attributed to companies

<sup>3</sup> Report N° 92/03, Venezuela, *Elias Santana et al.* IACHR, 2003 Annual Report, para. 50, which cites Report N° 67/01, Case 11.859 *Tomás Enrique Carvallo Quintana*, Argentina, IACHR, 2001 Annual Report quoting Report N° 103/99, *Bernard Merens and Family*, Argentina, September 27, 1999, 1999 Annual Report; Report N° 10/91, Case 10.169, Peru, *Banco de Lima*. IACHR, 1990-1991 Annual Report, p. 452; Report N° 47/97, Paraguay, *Tabacalera Boquerón*. IACHR, 1997 Annual Report, p. 229; Report N° 39/99, Argentina, *Mevopal, S.A.*, IACHR, 1999 Annual Report, para. 2.

<sup>4</sup> Inter-American Court, *Case of Cantos v. Argentina*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85, para. 29. See also IACHR, Report No. 67/01, Argentina, *Tomás Enrique Carvallo Quintana*, June 14, 2001, para. 54, which states that "in principle, shareholders cannot claim to be victims of interference with the rights of a company absent a showing of direct effect on their rights." (emphasis added).

become rights and obligations for the individuals who comprise them or who act in their name or representation,” and that “although the figure of legal entities has not been expressly recognized by the American Convention... this does not mean that, in specific circumstances, an individual may not resort to the inter-American system for the protection of human rights to enforce his fundamental rights, even when they are encompassed in a legal figure or fiction created by the same system of law.”<sup>5</sup>

33. In this regard, a system for the effective and material protection of human rights is obliged to examine whether in each concrete case, beyond formal appearances, the allegedly arbitrary acts that affected a legal person also had by extension a material or substantial effect on the human rights of the natural persons related to, associated with, or in any way connected to the legal person.<sup>6</sup> If that were the case, and the other requirements for admissibility of the petition were met, the Commission could not reject the case under the pretext that the violation, *prima facie*, affected the legal person.

34. Although the Sociedad Periodística Extra, Limitada cannot be considered an alleged victim, the question that the IACHR must decide in this case is whether the imposition of subsequent liability against a newspaper in the instant case may have infringed on the freedom of expression of its editor-in-chief, who was responsible for deciding on the publication of the article and will, in the future, be responsible for deciding what to publish and what not to publish, based on his journalistic criteria. To answer this question, it is necessary to look briefly at the role of the media in the exercise of freedom of thought and expression by persons who work for them, and then to consider whether Mr. William Gómez Vargas should be included as an alleged victim as requested by the petitioner in this case.

35. The Inter-American Court has repeatedly stressed in its jurisprudence that “The media play an essential role as vehicles for the exercise of the social dimension of freedom of expression in a democratic society” and that the media are “essential instruments of freedom of thought and expression.”<sup>7</sup> It is through such media that it is possible for editors and journalists to exercise the right of freedom of expression as individuals. Therefore, it is essential that editors and journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.<sup>8</sup>

36. The Commission therefore considers that any State conduct which allegedly interferes in the free exercise of the work of a media outlet could tend to constitute a violation of the right to freedom of expression to the detriment of natural persons who use this vehicle to disseminate information and opinions. In such cases, the Commission must analyze the origin, nature and scope of the sanction, its effect on the right to freedom of expression of those who utilize the media outlet in question, and, in particular, the alleged victim’s role in the media outlet. In this way, the Commission will determine whether, by extension, the sanction imposed on the media outlet (legal person) had a negative, real and substantial impact on the right to freedom of expression of the alleged victim (natural person). In conformity with the IACHR’s practice, these criteria provide a means to distinguish when the rights of a legal person are at issue, and when the rights of a natural person are negatively affected.<sup>9</sup> This analysis should also take into account that in the area of freedom of expression media outlets are genuine

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<sup>5</sup> Inter-American Court, *Case of Cantos v. Argentina*. Preliminary Objections. Judgment of September 7, 2001. Series C No. 85, paras. 27, 29.

<sup>6</sup> In the *Herrera Ulloa* case, for example, the IACHR argued before the Inter-American Court that Mr. Fernán Vargas Rohrmoser, legal representative of “La Nación,” was a victim. The Court did not accept this position. See Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C No. 107, paras. 97, 100.

<sup>7</sup> Inter-American Court, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85, November 13, 1985, Series A No. 5, para. 30. See also paras. 34, 71, 72, and 74; *Case of Ricardo Canese*, para. 94; *Case of Herrera Ulloa*, Judgment of July 2, 2004. Series C No. 107, para. 117, and *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001. Series C No. 74, para. 149.

<sup>8</sup> Inter-American Court, *Case of Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment of February 6, 2001. Series C No. 74, para. 150.

<sup>9</sup> See IACHR, Report No. 67/01, Argentina, *Tomás Enrique Carvallo Quintana*, June 14, 2001, para. 56.

instruments for the exercise of the right.<sup>10</sup> In effect, just as trade unions are instruments for the exercise of workers' right to association and political parties are vehicles for the exercise of citizens' political rights, media outlets are mechanisms that facilitate the exercise of the fundamental right to freedom of expression by those who use the outlet to disseminate ideas and information. As a result, when analyzing cases such as the present one, the Commission should be attentive to the possible effects that a sanction imposed on a media outlet could have with regard to the fundamental right of its members, while clearly distinguishing these effects from the sanction's possible impact on other spheres of the outlet's commercial or corporate activities.

37. In the instant case, the Commission notes that Mr. William Gómez Vargas is a journalist who at the time of the events and up to the present time has been the editor-in-chief of the newspaper Extra. As editor-in-chief, Mr. William Gómez can make the final decision on such things as the inclusion, editing, or deletion of photographs, headlines, or texts of the articles published in the newspaper Extra. This is particularly important given that it was precisely the "decision to publish the photograph,"<sup>11</sup> presumably made by Mr. William Gómez in his role as editor-in-chief, which gave rise to the Supreme Court of Justice's sentence ordering the payment of damages by the media outlet that he edits. The Costa Rican Supreme Court, in referring to the responsibility of the editors, observed that "one thing is to write an article and another thing altogether is to edit it (an activity that includes—or could include—making decisions about what to publish, in which part of the newspaper, and whether images will accompany the text)."<sup>12</sup> The Supreme Court therefore considered that it was not the information in the article but rather the publishing of the photograph that was worthy of reproach, and as a consequence decided to acquit the journalist who wrote the article and award civil damages against the newspaper based on the editorial decision to publish the aforementioned photograph.<sup>13</sup>

38. The Commission considers it plausible that in this case, given the role of Mr. William Gómez as editor-in-chief and owner of the newspaper Extra, the civil damages imposed (in response to an editorial decision) against the newspaper he runs could by extension affect his right to freely express information and opinions in the terms of article 13.2 of the Convention. The Commission must decide, in the merits phase of this case, whether his rights were in fact affected and, if so, whether the requirements of article 13.2 of the Convention were complied with.

39. Finally, with respect to the allegation that Costa Rican society is an alleged victim, Article 46.1 of the Convention and Article 28 of the Commission's Rules of Procedure establish that a requirement for consideration of a petition is the identification of the alleged victims.<sup>14</sup> Costa Rican society in the abstract can therefore not be considered an alleged victim of the violations alleged by the petitioner in the context of this individual case.

40. Based on the foregoing reasons, the Commission considers that Mr. William Gómez Vargas, a natural person with regard to whom the State is obligated to respect the rights guaranteed in the Convention, has the status of alleged victim. Hence, the Commission concludes that it has *ratione personae* competence to consider the petition that is the subject of this report.

## **B. Requirements for admissibility of the petition**

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<sup>10</sup> Inter-American Court, *Case of Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment of February 6, 2001. Series C No. 74, para. 149.

<sup>11</sup> Third Chamber of the Supreme Court of Costa Rica. Case 01-900109-0016-PE, Resolution 2005-00857, of August 5, 2005. Appendix III to the petitioners' initial petition, received on October 17, 2005.

<sup>12</sup> Third Chamber of the Supreme Court of Costa Rica. Case 01-900109-0016-PE, Resolution 2005-00857, of August 5, 2005. Appendix III to the petitioners' initial petition, received on October 17, 2005.

<sup>13</sup> Third Chamber of the Supreme Court of Costa Rica. Case 01-900109-0016-PE, Resolution 2005-00857, of August 5, 2005. Appendix III to the petitioners' initial petition, received on October 17, 2005.

<sup>14</sup> Inter-American Court, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 46, and IACHR, Report No. 51/02, Case 12.404, Peru. IACHR, 2002 Annual Report.

## 1. Exhaustion of domestic remedies

41. Article 46.1.a of the American Convention stipulates, as a requirement for admission of a petition under the terms of Article 44 of the treaty, that remedies under domestic law have been tried and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to inform national authorities of an alleged violation of a protected right, and to give them an opportunity to correct it, if appropriate, before it is considered at the international level. In this regard, if the petitioner alleges that domestic remedies were exhausted, the claims presented before the IACHR should have been raised before the national judicial authorities.<sup>15</sup>

42. In the instant case, the petitioner stated that the Costa Rican Supreme Court's judgment on the nullification appeal on August 5, 2005 exhausted domestic remedies, because no ordinary appeal can be filed against this decision under the country's domestic legislation. In particular, the IACHR notes that under Article 30 of Costa Rican Law 7135 on Constitutional Jurisdiction, *amparo* remedies do not proceed: "b) Against resolutions and legal actions of the Courts."<sup>16</sup> The State for its part did not allege a lack of exhaustion of domestic remedies, and as such did not indicate the existence of any additional remedy to be exhausted.

43. The Commission therefore considers that Mr. William Gómez Vargas—as editor-in-chief, owner, and legal representative of the newspaper Extra—exhausted the remedies available under Costa Rican law to challenge the judicial sanctions imposed for publication of the abovementioned information. Although these remedies were exhausted on behalf of the Sociedad Periodística Extra Limitada, the question of possible violation of freedom of expression now being considered was clearly raised by the defendant in the domestic proceedings<sup>17</sup> and resolved by the Supreme Court<sup>18</sup>—with explicit references to Article 13 of the American Convention—in those proceedings. As such, the complaints in the proceedings that were exhausted (on behalf of the Sociedad Periodística Extra Limitada) at the domestic level coincide with those submitted (by Mr. William Gómez Vargas) to the IACHR. The Commission therefore considers that domestic remedies were exhausted, as required by Article 46.1.a of the American Convention.

## 2. Deadline for presentation of the petition

44. Article 46.1.b of the American Convention requires that in order for petitions to be admissible they be submitted within six months of the date the petitioner is notified of the final judgment that exhausts domestic remedies. Since the alleged victim was notified of the final judgment on September 1, 2005, and the petition was presented to the IACHR on October 17, 2005, the Commission concludes that the deadline set in the abovementioned provision of the Convention has been met.

## 3. Duplication of proceedings and international *res judicata*

45. The case file has no information that would indicate that this petition is pending in another international proceeding. In addition, the Commission has received no information to that effect, nor any information that the petition is substantially the same as one previously studied. It therefore considers that the requirements of Articles 46.1.c and 47.d of the Convention have been satisfied.

## 4. Nature of the allegations

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<sup>15</sup> See IACHR, Report No. 67/01, *Tomás Enrique Carvallo Quintana* (Argentina), June 14, 2001, para. 56.

<sup>16</sup> Costa Rica's Constitutional Jurisdiction Law stipulates in Article 30: "No protection (*amparo*) may be sought...(b) Against resolutions and legal actions of the courts."

<sup>17</sup> See Nullification Appeal against the judgment of February 26, 2004, in case No. 150-2004, March 15, 2004, pp. 45, 50-56. Appendix III to the petitioners' initial petition, received on October 17, 2005.

<sup>18</sup> See Third Chamber of the Supreme Court of Costa Rica. Case 01-900109-0016-PE, Resolution 2005-00857, of August 5, 2005. Appendix III to the petitioners' initial petition, received on October 17, 2005.

46. For the purposes of the report on admissibility, the IACHR must only decide at this stage of the proceeding whether the petition states facts that tend to establish a violation of the rights guaranteed by the Convention, as required by Article 47.b of the American Convention, or whether it is “manifestly groundless” or “obviously out of order,” according to paragraph c of the same article.

47. At this stage of the proceeding, the level of conviction regarding these standards is different from that which applies in deciding on the merits of a complaint. The IACHR must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. This examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them. Thus, the Commission’s Rules of Procedure, by setting out two clearly separate phases for admissibility and merits, reflects the distinction between the evaluation that the IACHR must conduct to declare a petition admissible and the assessment necessary to establish a violation.

48. The petitioner argued that imposition of a sanction on a newspaper that published true information about a matter of relevance to the community had violated the provisions of Article 13 of the American Convention to the detriment of the newspaper’s editor-in-chief. The petitioner also maintained that the law used as the basis for the sentence is ambiguous.

49. The Commission finds that the arguments adduced by the petitioner are not manifestly groundless with respect to the possible violation of the right guaranteed in Article 13 of the Convention in the case of the penalty imposed on the newspaper Extra, through the Sociedad Periodística Extra, Limitada, to the detriment of its co-owner, editor-in-chief, and legal representative, William Gómez Vargas.

50. In the merits phase of the instant case the Commission must decide whether the civil penalty impugned by the petitioner did or did not satisfy the requirements established in Article 13 of the American Convention in order to be characterized as a legitimate restriction on the right to freedom of thought and expression of the editor-in-chief of the penalized newspaper. To do that, the Commission must determine whether the Convention’s requirements for imposing subsequent liability for the abuse of the right to freedom of thought and expression have been met.

51. Concerning the argument that the laws used as the basis for the civil conviction are ambiguous,<sup>19</sup> in the merits phase the IACHR must analyze whether those laws satisfy the requirements established in the American Convention for restriction of the right to freedom of expression in a democratic society. In application of the *iura novit curia* principle, the Commission considers that the facts described by the petitioner could characterize an alleged violation of Article 2 of the American Convention.

52. With respect to the State’s allegation that the petitioner is seeking to use the IACHR as an appeals court to escape an obligation imposed in a domestic legal proceeding, the Inter-American Commission’s jurisprudence clearly establishes that it is not competent to review judgments handed down by national courts that act within their jurisdiction and apply the appropriate judicial guarantees. However, the Inter-American Commission is competent to declare a petition admissible and rule on its merits when the judgment challenged could materially affect any right guaranteed by the American Convention.<sup>20</sup> In the instant case, the IACHR must determine in the merits phase if the judicial penalty imposed meets the requirements of Article 13 of the American Convention.

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<sup>19</sup> The Third Chamber of the Supreme Court ruled in this regard that “Article 135 of the Penal Code 1941 (still in force because it deals with civil liability) and Article 1045 of the Civil Code are directly applicable.” Third Chamber of the Supreme Court of Costa Rica. Case 01-900109-0016-PE, Resolution 2005-00857, of August 5, 2005. Appendix III to the petitioners’ initial petition, received on October 17, 2005.

<sup>20</sup> See IACHR Report No. 32/07, Petition 452-05. Juan Patricio Marielo Saravia et al. (Chile), May 2, 2007, para. 55; Report No. 1/03, Case 12.221, Jorge Omar Gutiérrez (Argentina), February 20, 2003, para. 46, citing Report No. 39/96, Case 11.673, *Marzoni*, Argentina, October 15, 1996, paras. 50-51. See IACHR, Report No. 4/04, Petition 12.324, Rubén Luis Godoy (Argentina), February 24, 2004, para. 44.

**V. CONCLUSIONS**

53. The Commission concludes that it is competent to consider this petition and that it satisfies the requirements for admissibility established in Articles 46 and 47 of the American Convention and in Articles 30, 36, and related ones in the IACHR Rules of Procedure. Based on the foregoing arguments of fact and law, and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:**

1. To declare the petition admissible with respect to Article 13 of the Convention in connection with Articles 1.1 and 2 of the same instrument.
2. To transmit this report to the petitioner and the State.
3. To continue with the analysis of the merits of the case.
4. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 31st day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.