

**REPORT Nº 50/05**  
PETITION 369/04  
ADMISSIBILITY  
JORGE LUIS CHAVES CAMBRONERO  
COSTA RICA  
October 12, 2005

**I. SUMMARY**

1. On December 18, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a petition lodged by Mr. Jorge Luis Chaves Cambronero (hereinafter the "petitioner" or the "complainant") in which he claims that the State of Costa Rica (hereinafter the "State" or "Costa Rica") is responsible for the alleged application of mechanisms of prior restraint established by Law No. 7440 (*Ley General de Espectáculos Públicos, Materiales Audiovisuales e Impresos*) [General Law of Public Entertainment, Audiovisual and Printed Material] (hereinafter "Law No. 7440"), to the publication of the magazines *Chavespectáculos* and *Sexxxx Caliente*, of which the petitioner serves as editor.

2. The petitioner claims that the State is responsible for violating Articles 8 (right to a fair trial), 13 (freedom of thought and expression), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). In his petition, Mr. Chaves Cambronero also states that he has received a series of sanctions, including the payment of a fine, the closure of his establishment and the revocation of his commercial license, because he refused to request from the local authorities a rating for the distribution of the aforementioned magazines, pursuant to the provisions of Law No. 7440.

3. The State contends that Law No. 7440 establishes mechanisms for preventive control and do not constitute forms of prior restraint incompatible with the provisions of Article 13 of the American Convention. The State affirms that it is legal to establish domestic mechanisms to assess material of a pornographic character, in the interest of protecting minors and public morals. In this respect, it states that the petitioner has failed to comply with the provisions of Law No. 7440, since he has not presented issues of the aforementioned magazines to the competent authorities for their rating.

4. Pursuant to the provisions of Articles 46 and 47 of the American Convention as well as Articles 30 and 37 of its Rules of Procedure, and after analyzing the petition without prejudging on the merits of the case, the Commission has decided to declare the petition admissible regarding the alleged violations of Article 13 of the American Convention, in connection with Articles 1(1) and 2 of same. The Commission has also decided to notify this decision to the parties, to publish it and to include it in its *Annual Report* to the General Assembly of the OAS.

**II. PROCESSING BEFORE THE COMMISSION**

5. The complaint was lodged by the petitioner before the Executive Secretariat of the Commission on December 18, 2003. In it, Mr. Chaves Cambronero additionally requested

precautionary measures to prevent the closure of the offices of the magazines *Chavespectáculos y Sexxxo Caliente*. The terms of this request were reiterated in new communications from the petitioner on March 5 and April 5, 2004.

6. On April 26, 2004, the Commission decided to deny the request for precautionary measures. Later, on April 28, 2004, the Commission assigned the number 369/04 to the petition.

7. On May 26, 2004, the offices of the magazines *Chavespectáculos* and *Sexxxo Caliente* were closed. At the time of the announcement and execution of the closure order, the petitioner presented additional communications, on May 19, May 24, May 28, July 2, and July 12, 2004.

8. On June 8, 2004, the Commission received a communication from Raúl Silesky Jiménez, president of the *Colegio de Periodistas de Costa Rica* [Costa Rican Press Association], in support of the complaint of the petitioner. The particulars of said communication were reiterated in a new letter received by the Commission on June 17, 2004.

9. On August 11, 2004, the Commission transmitted the pertinent portions of the petition to the State, granting it a period of two months to present its observations.

10. On November 5, 2004, the State transmitted its observations regarding the petition. The petitioner, in turn, presented his observations in a communication received by the Commission on December 4, 2004. The State sent its observations in a communication received by the Commission on February 7, 2005. The petitioner sent his observations to said communication, which were received by the Commission on April 11, 2005. Finally, on July 11, 2005, the Commission received the observations presented by the State regarding the last communication from the petitioner.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioner

11. Jorge Luis Chaves Cambronero is the editor of the magazines *Chavespectáculos* and *Sexxxo Caliente* in Costa Rica. The petitioner affirms that *Chavespectáculos* is a magazine devoted to disseminating information on local entertainment and celebrity press. *Sexxxo Caliente*, on the other hand, is considered by the petitioner to be a magazine with pornographic content. The petitioner states that it is for this reason that *Sexxxo Caliente* is distributed in a plastic bag, properly covered and with a disclaimer stating that its sale is forbidden to persons under 18 years of age.

12. Law No. 7440<sup>1</sup> provides that the access to, distribution of and sale of printed material of pornographic character<sup>2</sup> must submit to the rating by and authorization of an agency

<sup>1</sup> Law 7440, General Law of Public Entertainment, Audiovisual and Printed Material, of October 11, 1994, whose administrative regulations were issued by Executive Decree No. 26937-J of April 27, 1998 (partially modified by Executive Decree No. 31805-J-MP of May 12, 2004)

<sup>2</sup> Law 7440 literally provides:

Article 1. Duty of the State

known as the *Comisión de Control y Calificación de Espectáculos Públicos* [Commission for the Control and Rating of Public Entertainment].<sup>3</sup> Law No. 7440, moreover, provides a series of sanctions for failure to comply with said duty, which range from a fine to the final closure of offices and suspension of operations.<sup>4</sup> It is appropriate to note that at the time of the presentation of the complaint before the Inter-American Commission, none of the magazines had the rating or authorization provided for by Law No. 7440.

...Continuation

This law governs the activity that the State must carry out to protect society, in particular minors and families, regarding access to public entertainment, and audiovisual and printed materials. It also regulates the dissemination and sale of said materials.

#### Article 3. Activities

This Law regulates the assessment of the contents of the following activities:

(...) f) Written material of a pornographic character.

#### Article 20. Duties of the entrepreneur.

Any natural person who, in his own name or that of a corporation, distributes, presents, transmits or receives, for dissemination either free of charge or for commercial purposes, movies in theaters or in video format, videogames, live radio or television programs or shows, must make this material available to the competent organs, provide the means to examine it and comply with the decisions reached by the latter. Moreover, it must yield the necessary space to warn the public about the rating of and restrictions on public entertainment, including these in their advertising.

It is worth noting that it is in the Regulations of Law No. 7440 where "pornography" is defined, as follows:

#### Article 2. Definitions

For the purposes of these Regulations, it shall be understood as:

(...)

o) Pornography: The presentation, exhibition, description or any representation, by any means, of genital sexual acts, of excretive functions, of acts of masturbation, normal, perverted or deviant, real or simulated.

(...)

<sup>3</sup> The *Comisión de Control y Calificación de Espectáculos Públicos* [Commission for the Control and Rating of Public Performances], in turn, is under the *Consejo Nacional de Espectáculos Públicos y Afines* [National Council for Public Performances and Similar Events]. Both entities were created by Law 7440. This latter organ decides appeals against applications of Law 7440 and which have been initiated before said commission.

<sup>4</sup> Law 7440, in this connection, states the following:

#### Article 21. Distribution of material without authorization.

Any natural person who in his own name or in that of a corporation distributes or exhibits, either for free or for sale, material regulated by this law, without the rating or prior authorization of the Commission, for each unit distributed or exhibited shall be fined in the amount equivalent to seven times the base salary of a clerk 1, established by the National Budget.

If the infraction should occur more than once this fine shall be doubled.

#### Article 24. Closure of premises.

If the infraction should occur more than once, the judicial authority shall order the closing of the premises where it occurred and the suspension of corporate operations, as follows:

- a) for one month, upon the second time the infraction is committed.
- b) for three months, upon the third time the infraction is committed.
- c) if the infraction is committed for a fourth time, the judicial authority shall order the permanent closing of the establishment and shall communicate said order to the appropriate municipality, which shall cancel its license, or to the Ministerio de Gobernación [Ministry of the Interior] for it to cancel the concessions of radio or television frequencies, or to the competent authorities for them to cancel the pertinent permission or authorization.

(...)

13. The petitioner states that between 1998 and 2001 he had been the target of a series of complaints before the *Juzgado Contravencional del Primer Circuito Judicial de San José* [Misdemeanor Court of the First Judicial Circuit of San José], brought by the *Consejo Nacional de Espectáculos Públicos y Afines* [National Council for Public Performances and Similar Events], the *Dirección de Control Nacional de Propaganda del Ministerio de Gobernación y Policía* [Office for the National Control of Propaganda of the Ministry of the Interior and Police], y el *Patronato Nacional de la Infancia* [National Foundation for Children], regarding the content of *Chavespectáculos* and *Sexxxo Caliente*.<sup>5</sup> The complaints stated that Chaves Cambronero had been failing to comply with the obligation to submit his material and have it rated, as provided for by Law No. 7440 for printed material of a pornographic character.

14. According to the petitioner, as a result of these complaints, on October 6, 2003, the Misdemeanor Court of the First Judicial Circuit of San José handed down judgment 1490-2003, sanctioning Mr. Chaves Cambronero for violation of Law No. 7440, sentencing him to a fine of one million seventy one thousand colones and instructing him to submit to the rating of the Commission for the Control and Rating of Public Entertainment. The sentence was appealed by Mr. Chaves Cambronero and affirmed by the higher court (*Juzgado Penal del*

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<sup>5</sup> The documentation presented indicates that the Consejo Nacional de Espectáculos Públicos y Afines presented a series of complaints against Chaves Cambronero:

- File No. 98-300526-231-FC, of April 17, 1998, based on the opinion that the images of *Chavespectáculos* are "erotic-pornographic".
- File No. No. 98-001241-626-FC, undated, based on the opinion that *Chavespectáculos* No. 31, of May 1998, contains "erótico-pornográfico" images.
- File No. No. 98-004437-626-FC, undated, based on the opinion that *Chavespectáculos* No. 38, of November 1998, contains "erótico-pornográfico" images.
- File No. No. 01-005784-626-FC, undated, based on the opinion that *Chavespectáculos* No. 108, of August 2, 2001, "due to the images presented by said publication."
- File No. 01-005784-626-FC, undated, based on the opinion that *Sexxxo Caliente*, "because it states that it continues to be published and distributed without the necessary rating on the part of the appropriate commission, and that issues number two, three, four, and five have been distributed for sale."

It is also stated that the *Dirección de Control Nacional de Propaganda del Ministerio de Gobernación y Policía* [Office for the National Control of Propaganda of the Ministry of the Interior and Police] filed a series of complaints against Chaves Cambronero:

- File No. 98-001242-626-FC, undated, against the front page of *Chavespectáculos* of February 28 and May 31, 1998, "because in the front page the buttocks of the models are used to attract attention towards the sale of the magazine and its content is discriminatory against the female sex."
- File No. 99-001511-626-FC, No. 99-001511-626-FC, undated, against the front page of *Chavespectáculos* of February 1, 1999, because it "affects the dignity of women and modesty of families."
- File No. No. 01-004178-626-FC, undated, complaint against Chaves because on July 18 and 19, 2000, he announced his intention to sell a publication, "admitting that it is of a pornographic nature."
- File No. 98-001473-FC, undated, based on the opinion that *Sexxxo Caliente* "because it continues to be edited and distributed, without the appropriate rating by the *Consejo de Espectáculos Públicos* [Council on Public Performances]."

Finally, it is stated that the *Patronato Nacional de la Infancia* [National Foundation for Children] also filed a complaint against Chaves Cambronero:

- File No. 98-001473-FC, undated, against *Chavespectáculos* No. 31, of May 1998, " for publishing photographs of a female minor."

*Primer Circuito Judicial de San José*) [Criminal Court of the First Judicial Circuit of San José] in all of its points in its ruling of November 13, 2003.<sup>6</sup>

15. The petitioner has contended in his different communications that Law No. 7440 provides mechanisms of prior restraint incompatible with the provisions of Article 13 of the American Convention. In particular, the petitioner states that the rating required by the Commission for the Control and Rating of Public Entertainment for the publication of the magazines *Chavespectáculos* and *Sexxxo Caliente* and in general of material of a pornographic character is contrary to the provisions of Article 13(2) and 13(4) of the American Convention.

16. The petitioner affirms that the magazine *Chavespectáculos* is not of a pornographic nature. Regarding the magazine *Sexxxo Caliente*, the petitioner claims that it is a publication of pornographic character that follows a format that clearly warns the public regarding its content. Consequently, the petitioner contends, neither one of the publications requires a rating or approval of any kind from the Commission for the Control and Rating of Public Entertainment.

17. The petitioner further alleges that the text of Law No. 7440, in providing for “duties of the entrepreneur” does not establish an obligation of any kind to submit “printed material” to the Commission for the Control and Rating of Public Entertainment. Therefore, the rule does not apply to him, and the sanctions imposed upon him are baseless. In this regard, Article 20 of Law No. 7440 provides that:

*Article 20. Duties of the entrepreneur.* Any natural person who, in his own name or that of a corporation, distributes, presents, transmits or receives, for dissemination either free of charge or for commercial purposes, movies in theaters or in video format, videogames, live radio or television programs or shows, must make this material available to the competent organs, provide the means to examine it and comply with the decisions reached by the latter. Moreover, it must yield to the Council free of charge the necessary space to warn the public about the rating of and restrictions on the shows, including these in their advertising.

18. In addition, Mr. Chaves Cambronero states that, even if Law No. 7440 were to impose said obligation, this would be contrary to the provisions of Article 13 of the American Convention. In this respect, the petitioner argues that to demand measures of this kind for the press, as is the case of *Chavespectáculos* and *Sexxxo Caliente*, is contrary to the provisions of the American Convention. The petitioner further states that the press cannot be subjected in the same way that public entertainments are to mechanisms of prior restraint provided for by the law, pursuant to the provisions of Article 13(4) of the American Convention.

19. The petitioner has also argued that his rights to due process and to judicial protection have been violated. In this regard, the petitioner states that in the same file with the complaints against him, a ruling is present which initially acquits him based on the running of the statute of limitations regarding criminal liability. This ruling was later overturned by the same judge that had acquitted him, whom later ordered the case to proceed. This trial was concluded

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<sup>6</sup> It is fitting to note that, in its considerations, the court of the first instance [lower court] bases its opinion on Articles 1, 3, 11(a), 13, 21 and 30 of Law No. 7440. The judgment does not mention any violation of Article 20 of Law No. 7440. The ruling of the appellate court states that the sentence is not related to the fact that the publications in question were pornographic or not, but to the failure by the petitioner to comply with their submission for examination by the Commission for the Control and Rating of Public Performances.

by a sentence of the court of the first instance on October 6, 2003, which was later affirmed by a judgment of November 13, 2003. It is important to note that the petitioner has not attached copies of the decision acquitting him or the ruling overturning the decision, both of which he refers to.

20. It is worth noting that in view of Mr. Chaves Cambroner's refusal to pay the fine, on March 3, 2004 the Misdemeanor Court of the First Judicial Circuit of San José ordered the provisional closure of the premises where both magazines were published and revoked the petitioner's commercial license. This ruling was carried out on May 26, 2004.

21. In this regard, the petitioner has stated that, as a result of the closure, he "[could] not meet [his] obligations, salaries nor could any new issues be printed, reason for which he defaulted on his payments, including a mortgage on the building where [his] business was located."

22. On July 27, 2004 there was a conciliation agreement made at the Misdemeanor Court of the First Judicial Circuit of San José. According to this, Mr. Chaves Cambroner agreed to submit the publication *Sexxxo Caliente* for examination by the Commission for the Control and Rating of Public Entertainment.<sup>7</sup> On July 30, 2004, the petitioner requested that the Commission for the Control and Rating of Public Entertainment issue "the appropriate rating and authorization for the publishing and sale of [...] *Sexxo Caliente*."

23. On that same day, July 30, 2004, the Misdemeanor Court of the First Judicial Circuit of San José decided to authorize the payment of the fine in "ten installments of one hundred thousand colones," adding that "once the receipt for the first installment is presented to this Court, it will order that petitioner be authorized to publish the magazines *Chavespectáculos* and *Sexxxo Caliente*, as well as issue their commercial licenses." Subsequently, on September 1, 2005, the petitioner requested the rating of issue 48 of *Sexxo Caliente*. The Commission for the Control and Rating of Public Entertainment, on September 10, 2004, decided to rate issue 48 of *Sexxo Caliente* as pornographic material.

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

24. The State has stated in its different communications that Law No. 7440 does not establish mechanisms for prior restraint or prohibitions incompatible with Article 13 of the American Convention. In this respect, the State contends that the Commission for the Control and Rating of Public Entertainment exercises what it calls a "preventive control" meant to avoid the injury both of the psychological health of minor persons and of public morals, a condition necessary for social harmony, which the State, in turn, must protect.

25. It also affirms that Law No. 7440, in assigning to the Commission for the Control and Rating of Public Entertainment "the duty to issue a rating based on the age of the spectator, recipient or reader, and the content analysis of the material to be rated [...] does not amount to a prohibition, since what is obtained at the end is only the establishment of the conditions of its sale, according to the nature of the activity."

<sup>7</sup> In its July 11, 2005 response, the State affirmed that "the conciliation procedure indeed took place after the judgment [of November 13, 2003], since Mr. Chaves continued to periodically publish the SEXXXO CALIENTE Magazine, without the rating; this made it necessary to lodge a new complaint."

26. The State has further contended that printed material of a pornographic character is subject to scrutiny under Law No. 7440, under Articles 1, 3 and 21, and that Mr. Chaves Cambronero was distributing pornographic material without the required rating. In this regard, Law No. 7440 provides the following:

*Article 1. Duty of the State* This law governs the activity that the State must carry out to protect society, in particular minors and families, regarding access to public entertainment, and to audiovisual and printed materials. It also regulates the dissemination and sale of said materials.

*Article 3. Activities.* This Law regulates the assessment of the contents of the following activities:

(...) f) Written material of a pornographic character.

*Article 21. Distribution of material without authorization.* Any natural person who in his own name or in that of a corporation distributes or exhibits, either for free or for sale, material regulated by this law, without the rating or prior authorization of the Commission, for each unit distributed or exhibited shall be fined in the amount equivalent to seven times the base salary of a clerk 1, established by the National Budget. If the infraction should occur more than once this fine shall be doubled.

27. In addition, the State has affirmed that the Commission for the Control and Rating of Public Entertainment has never rated the magazine *Chavespectáculos* as a pornographic publication. The State notes that in this respect, “what has been the object of the complaint is the inclusion of pornographic material in some of the issues that contained that kind of material and the failure of Mr. Chaves Cambronero to comply with the procedures administered and executed by the Commission for the Control and Rating of Public Entertainment.” Regarding *Sexxxo Caliente*, the State has contended that this publication is pornographic and that it was being distributed without the required rating on the part of the Commission for the Control and Rating of Public Entertainment.

28. Regarding the petitioner’s allegations related to violations of due process and judicial protection, the State has responded that “in the matters brought to the judicial venue, the petitioner’s rights have always been respected, and he has been guaranteed the rules of due process.” In this respect, the State has further argued that “it does not follow from the fact that the petitioner does not agree with the judicial rulings made within the Costa Rican State, that his fundamental rights have been violated.”

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Competence**

29. The Commission notes that Costa Rica has been a party to the Convention since April 8, 1970, date on which it deposited its instrument of ratification and, therefore, is responsible internationally for violations to said instrument.

30. Pursuant to Article 44 of the American Convention and Article 23 of the IACHR Rules of Procedure, the petitioning party has legal standing to present petitions before the Commission regarding alleged violations of rights established in the American Convention. The alleged victim is a natural person whose rights, recognized by the Convention, the State undertook to ensure. In this respect, the Commission deems it appropriate to note that the judicial rulings sanctioning violations of Law No. 7440, referred to in the petition, directly

affected the person of Jorge Luis Chaves Cambronero.<sup>8</sup> The Commission is, therefore, competent *ratione personae* to examine the petition.

31. The Commission is competent *ratione materiae* because the petition refers to complaints of violations of human rights protected by the American Convention. The Commission is also competent *ratione temporis* since the obligation to respect and ensure the rights protected under the American Convention was already binding upon the State on the date the facts alleged in the petition were said to have occurred. Finally, the Commission is competent *ratione loci* to consider the petition, insofar as it alleges the violations of rights protected by the American Convention within the territory of a State party to the Convention.

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

### **1. Exhaustion of domestic remedies**

32. The petitioner claims that the ruling of the Criminal Court of the First Judicial Circuit of San José of November 13, 2003, denying the appeal filed against the judgment of October 6, 2003 of the Misdemeanor Court of the First Judicial Circuit of San José, exhausted the domestic remedies provided for by Costa Rican law. The State has made no observations regarding this argument.

33. The IACHR notes that exhaustion of domestic remedies is a requirement established by the Convention with the purpose of avoiding that the State respond internationally without having before had the opportunity of solving the problem using its domestic mechanisms. This requirement is consequently a legal defense and, as such, can be waived by the State, even tacitly, as in the instant case.<sup>9</sup> Consequently, the Commission considers that the requirement established by Article 46(1)(a) of the American Convention has been met.

### **2. Time period for the lodging of the petition**

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<sup>8</sup> The operative part of judgment 1490-2003 of the Juzgado Contravencional del Primer Circuito Judicial de San José [Misdemeanor Court of the First Judicial Circuit of San José], handed down on October 6, 2003, rules that:

Based on the aforementioned [...] JORGE LUIS CHAVES CAMBRONERO IS HEREBY SENTENCED TO PAY A FINE EQUIVALENT TO SEVEN BASE SALARIES OF THE POSITION OF CLERK ONE, I.E., THE EXACT SUM OF ONE MILLION SEVENTY ONE THOUSAND COLONES [...]. The defendant is also advised that he is granted eight days to pay the fine imposed by this ruling [...] The defendant is warned that should he fail to comply with the payment of the fine imposed by this ruling within the allotted time period, the provisional closure of his establishment shall be ordered and the authorization to engage in business shall be suspended until such time as he pays the fine, without prejudice to other sanctions of closure and suspension for recidivism. (Emphasis in the original).

Likewise, the *Juzgado Penal del Primer Circuito Judicial de San José* [Criminal Court of the First Judicial Circuit of San José], in the reasons for its ruling of November 13, 2003, states the following:

It is noteworthy that the sentence under consideration does not refer to the question of whether it is pornographic material or not, since Mr. Chaves Cambronero's sentence has been issued because he did not have the aforementioned rating by the authorized Commission, and not on the basis of establishing what kind of material the defendant publishes and sells.

<sup>9</sup> I/A Court H.R., Case of Loayza-Tamayo, *Preliminary Objections*, Judgment of January 31, 1996. Series C No. 25, para. 40; Case of Castillo-Páez, *Preliminary Objections*, Judgment of January 30, 1996. Series C. No. 24, para. 40; Case of Neira-Alegría et al., *Preliminary Objections*. Judgment of December 11, 1991. Series C. No. 13, para. 30



34. Article 46(1)(b) of the Convention provides that all petitions must be lodged within a period of six months from the date on which the petitioners have been notified of the final judgment, exhausting domestic remedies. The petitioner lodged his petition before the Commission on December 18, 2003. Therefore, the Commission concludes that the petition was presented within the time period provided for by Article 46(1)(b) of the Convention.

### **3. International duplication of the proceedings and *res judicata***

35. It is the Commission's understanding that there is nothing in the record to suggest that the petition is pending in another international proceeding; it has received no information indicating the existence of a situation of that nature, nor does the Commission consider that the petition or communication is substantially the same as one previously studied by the Commission. Therefore, it finds that the requirements of Articles 46(1)(c) and 47(d) of the Convention have been met.

### **4. Characterization of the facts**

36. In the instant case, the Commission considers that it should not decide, at this stage of the proceedings, whether the alleged violations of the alleged victim's freedom of expression took place. Regarding admissibility, the IACHR should decide at this time only if the facts put forward, should they be proven, could constitute violations of the Convention, as provided for by Article 47(b) of the American Convention, and if the petition is "manifestly groundless" or "obviously out of order," pursuant to subsection (c) of same.

37. The criterion to assess these points is different than the one required to decide on the merits of a complaint. The IACHR must make a *prima facie* assessment and determine if the complaint provides grounds for an apparent or potential violation of a right guaranteed by the Convention, although it must not establish that a violation has occurred. The examination which is appropriate to carry out at this time is simply a preliminary analysis that does not imply prejudice or a preview of an opinion on the merits of the case. The Rules of Procedure of the Commission themselves reflect this distinction between the assessment that the Commission must make in order to declare a petition admissible and the one required to establish the existence of a violation, when they provide for two distinct stages of admissibility and of merits.

38. The Commission considers that the arguments put forth by the petitioner with respect to the mechanisms of Law No. 7440 are not manifestly groundless, and their admissibility can therefore not be prevented based on sections 1, 2, 3, and 4 of Article 13. It also does not appear that the petitioner's arguments are manifestly groundless under the American Convention's general duties to respect rights and to adopt domestic legislative measures, provided for in Articles 1(1) and 2.

39. The Commission, however, considers it appropriate to point out that in general, and in contrast with what is claimed by the petitioner, the establishment of mechanisms within domestic law for the rating of written material of a pornographic character *per se* does not constitute a form of prior restraint as provided by Article 13(2) of the American Convention.

40. The Commission believes it is pertinent to clarify that the merits phase is the right moment to analyze the alleged violations of the American Convention, as well as the possible

application of other international instruments that are in harmony with the norms of interpretation arising from Article 29 of the Convention. In order to make its decisions on the presumed violations laid out in this petition, the Commission will examine the conditions under which the local authorities may establish regulations or restrictions for the publication and sale of written material of certain character without them being incompatible with Articles 13.2 (which bans prior censorship) and 13.4 (which allows prior censorship in certain cases) of the American Convention.

41. The Commission also considers it appropriate to underscore that the conciliation held by Mr. Chaves Cambronero in the case of the magazine *Sexxxo Caliente* does not make the object of this petition a purely academic affair. It should be noted that both the petitioner and the State have indicated to the Commission that the conciliation agreement is not related to the character of the material shown in the magazine *Chavespectáculos*.

42. Finally, with respect to the complaint's alleged violations of Articles 8 and 25 of the American Convention, it is the opinion of the Commission that these allegations have not been properly grounded in the instant case and therefore this portion of the petition should not be admitted.

## V. CONCLUSIONS

43. The Commission concludes that it is competent to hear this case and that the petition satisfies the requirements for admissibility, under the provisions of Articles 46 and 47 of the American Convention in conjunction with Articles 30, 37 and other concordant Articles of its Rules of Procedure. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

#### DECIDES:

1. To declare the petition admissible regarding Article 13 of the Convention in connection with Articles 1(1) and 2 of same.
2. To notify the State and the petitioner of this decision.
3. To continue with the analysis of the merits of the case.
4. To publish this decision and include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C. on the 12<sup>th</sup> day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez.