

REPORT N° 77/03 ¹
PETITIONS 12.091 AND 172/99
ADMISSIBILITY
JUAN CARLOS CHAPARRO ALVAREZ
AND FREDDY HERNAN LAPO IÑIGUEZ
ECUADOR
October 22, 2003

I. SUMMARY

1. On September 8, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR"), received a complaint alleging violation of rights protected in the American Convention on Human Rights (hereinafter "the American Convention") by the Republic of Ecuador (hereinafter "the State" or "Ecuador") to the detriment of Mr. Juan Carlos Chaparro Alvarez, a Chilean national, represented by Dr. Jose Leonardo Obando Laaz, and as of July 2, 2002, by Dr. Xavier Zavala Egas, his Ecuadorian lawyers, (hereinafter "the first petitioner"). The petition claims violation of Articles 7(2), (3), (5) and (6), 21(1) and (2) and 25(1), in connection with Article 1(1) of the American Convention; whereas the revised petition presented on August 15, 2002 claims violation of Articles 5(1), (2), 7(2), (3), (4), (5) and (6), 8(1), (2), 21(1), (2) and 25(1). Several months later, on April 14, 1999, the Commission received a complaint alleging violation of rights protected in the American Convention by Ecuador to the detriment of Mr. Freddy Hernan Lapo Iñiguez, an Ecuadorian national, represented by Mr. Juan Ferrusola Pereira, his lawyer (hereinafter "the second petitioner"). He claims violation of Article 7(2), (3) and (5) in connection with Article 1(1) of the American Convention. The Commission decides to consolidate the two petitions into one case, in conformity with Article 29(1)(d) of its Rules of Procedure, since they involve the same facts.

2. Mr. Chaparro, the first petitioner, maintains that on November 15, 1997, the police, without an arrest warrant and on suspicion of drug trafficking, detained him at his home. On the same day some of the employees of the company which he owned, AISLANTES PLUMAVIT DEL ECUADOR CIA, LTDA. (hereinafter, Plumavit Factory) were also detained. Mr. Chaparro was taken to a prison cell, where he remained for five days for interrogation. During this period it is alleged that the State violated the statutory 24-hour permissible incommunicado detention period; he was not allowed contact with his family nor permitted to consult a private lawyer, nor was the Chilean consulate advised of his detention. He is alleged to have manufactured Styrofoam containers for the export of fish into which narcotics were introduced. It was demonstrated by means of the police expert that the containers which Mr. Chaparro manufactures are distinct from those seized by the police. After 23 days in detention, a detention order was issued for Mr. Chaparro, despite the expert's evidence and with no legal basis to sustain the measures taken. Mr. Chaparro was accused of being a member of an international criminal syndicate of drug traffickers. At the time that the petition was filed Mr. Chaparro had been in detention for 9 months. He alleges that his detention was based on article 116 of the Drug Law (*Ley sobre Sustancias Estupefacientes y Psicotropicas*) which was declared unconstitutional by means of Resolution 119 on December 24, 1997. He presented the petition in order to obtain his release from detention. Mr. Chaparro was finally released on August 22, 1999, after having been held in detention for one year, six months and eleven days in the Center of Social Rehabilitation in Guayaquil. Even today the case has still not been completed at the domestic level and is currently suspended as a result of a provisional dismissal in favor of the accused.² Mr. Chaparro asserts that he has been ruined and that all of this was done in order to seize his belongings, especially the Plumavit Factory, acquired after twenty five years of honest work in Ecuador and several more in Chile previously. Mr. Chaparro claims that all of this occurred for the purpose of seizing his factory.

¹ Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case in accordance with Article 17 of the Rules of the Procedure of the IACHR.

² In October 2003 four years and eleven months had transpired since the initiation of the case without a conclusion having been reached.

3. Mr. Chaparro was the owner of the Plumavit Factory when he was arrested and the police mistakenly assumed that this Factory had produced the containers in which 400 kilos of drugs had been discovered at the Airport. The Factory was completely searched and no traces of drugs were discovered and it was also confirmed that the Plumavit Factory had not manufactured the containers. The State, for its part, argues that no rights were violated since due process had been strictly observed. The Commission has learned from a companion case (P172/99) that on November 12, 2001, the Fourth Chamber of the Superior Court of Justice of Guayaquil "provisionally" dismissed the proceedings against Mr. Chaparro.

4. The Commission decides in this report that Petition 12.091 meets the admissibility requirements set forth in Article 46 of the American Convention. Therefore, the Commission decides to declare the petition admissible, to open the case and to notify the parties of this decision, and to continue with its analysis of the merits regarding the alleged violations of Articles 5, 7, 8, 21 and 25 of the American Convention in conjunction with Article 1(1).

5. Mr. Lapo, the second petitioner, maintains that on November 15, 1997, he and three co-workers were illegally detained in his place of employment, the Plumavit Factory, by civil-clothed police officers who were accompanied by a large number of subordinates, dressed in combat uniforms and heavily armed with machine-guns and other weapons. Mr. Lapo was detained, without a judicial warrant, on suspicion of drug trafficking and was held in detention for one year, six months and eleven days in the Center of Social Rehabilitation in Guayaquil. Mr. Lapo was released from detention on May 26, 1999. He requests US \$5 million dollars in compensation and the punishment of the members of the police and judiciary who involved him in this drug-trafficking case.

6. Mr. Lapo Iñiguez was the Production Manager of the Plumavit Factory when he was arrested and the police mistakenly assumed that this Factory had produced the containers in which 400 kilos of drugs had been discovered at the Airport. The Factory was completely searched and no traces of drugs were discovered and it was also confirmed that the Plumavit Factory had not manufactured the containers. The State, for its part, argues that no rights were violated since due process had been strictly observed and that the Fourth Chamber of the Superior Court of Justice of Guayaquil dismissed the proceedings against the petitioner and ordered his release from detention.

7. The Commission decides in this report that Petition 172/99 meets the admissibility requirements set forth in Article 46 of the American Convention. Therefore, the Commission decides to declare the petition admissible, to open the case and to notify the parties of this decision, and to continue with its analysis of the merits regarding the alleged violations of Articles 7, 8 and 25 of the American Convention in conjunction with Article 1(1).

II. PROCESSING BY THE COMMISSION

8. The Commission received the first petitioner's (Mr. Chaparro) complaint on September 8, 1998. On January 15, 1999, the Commission received additional information from Mr. Chaparro's son. On January 26, 1999, the Commission communicated the petition to the State and requested a response within three months. On March 24, 1999, the Commission received the response from the State, which was transmitted to the petitioners on April 16, 1999 with a request for observations to be presented within 30 days. On June 10, 1999, the Commission received Mr. Chaparro's observations, which are dated May 30, 1999. These observations, in turn, were communicated to the State on August 24, 1999. On July 9, 2002, Mr. Chaparro informed the Commission that he had engaged the services of Mr. Zavala-Giler to continue processing his case before the Commission. Mr. Zavala-Giler requested and was provided with the relevant documentation on the status of the petition. On August 19, 2002, Mr. Zavala-Giler filed an updated petition and a response was presented to the observations formulated by the State. On

September 11, 2002 this additional information was submitted to the State with a request for any further information to be presented within 30 days. The Commission received additional information from Mr. Chaparro dated September 26, 2002, which was transmitted to the State for its observations. There has been no further communication from the State. On June 23, 2003, Mr. Chaparro requested a hearing on admissibility to be held during the next period of session of the Commission. The Commission decided not to grant the request for a hearing due to the large number of hearing requests.

9. The Commission received the second petitioner's (Mr. Lapo) complaint on April 14, 1999. On March 22, 2002, the Commission received additional information from Mr. Lapo. On March 31, 1999, the Commission received additional information from Mr. Lapo's wife. On March 22, 2002, the Commission received additional information that the case had been dismissed by the Superior Court and that Mr. Lapo had been released from detention. Mr. Lapo sought reparations of US\$ 5 million for the alleged arbitrary detention that had lasted one year, six months and 11 days. On June 7, 2002 the Commission communicated the petition to the State and requested a response within two months. On October 2, 2002, the Commission received the response from the State, which was transmitted to Mr. Lapo on October 17, 2002 with a request for observations to be presented within 30 days. On November 25, 2002, the Commission received Mr. Lapo's observations, which are dated November 14, 2002. These observations, in turn, were communicated to the State on November 27, 2002. There has been no further communication from the State.

III. POSITIONS OF THE PARTIES

A. Position of Mr. Chaparro, the first petitioner

10. On November 15, 1999, at approximately 4:00 p.m. Mr. Juan Carlos Chaparro Alvarez was arrested at his home, in the presence of his wife Mrs. Cecilia Aguirre de Chaparro and his brother-in-law, Carlos Aguirre M., by a plain-clothes policeman who did not want to identify himself and who was accompanied by a large number of subordinates dressed in combat uniforms, who were heavily armed with machineguns and automatic weapons. These police officers were accompanied by Judge Guadalupe Manrique Rossi, the 12th Criminal Judge of Guayas, who declined to present an arrest warrant, stating that it was not necessary and that her presence was sufficient. The petition alleges that Mr. Chaparro was requested, by means of deceit, to accompany them to a police station in order to make a declaration in regards to "a drug found in some Styrofoam containers." Not having any relation with the drug that was found, Mr. Chaparro willingly agreed to accompany them, thinking that he could provide them assistance since he was the owner of a company, the Plumavit Factory, which produced Styrofoam products in Ecuador.

11. The morning of the same day that he was arrested, unbeknownst to Mr. Chaparro, his Factory was illegally and arbitrarily searched, and the police proceeded to detain all the workers and employees whom they found working extra hours on that Saturday. No arrest warrants were shown, and Mr. Freddy Lapo, the Production Manager, requested Captain Peralta to produce a search warrant. The Captain, pulling out his pistol, retorted that "with this and 400 kilos of drugs in the airport I have the right to search where I want". Mr. Lapo, two mechanics and the man in charge of the warehouse, were still in prison at the time Mr. Chaparro's petition was presented, the others had been released after 10 days in detention.

12. Mr. Chaparro, and the workers from his factory, were taken to the police station, where they were locked in individual cells and held incommunicado for five days. They were not even permitted to make a phone call during that time. During those five days Mr. Chaparro was interrogated in the police office without the presence of his lawyer. The petition states that this fact can be corroborated by Dr. Marcelo Santos Vera, former Minister of Government of Ecuador, and who having learned of his situation came to see him with his wife and Mr. Joaquín Martínez, a friend of the family. The following day, the declaration was taken in the presence of a lawyer who

came to see him, an individual who is not a criminal lawyer and allegedly not the appropriate person to defend him, in the opinion of Mr. Chaparro, but a person who can be considered a witness to the fact that he was interrogated without the presence of a defense lawyer.

13. As a consequence, Mr. Chaparro was informed that the police, in an arbitrary and illegal manner, was attempting to involve him in an antinarcotics operation known as the "Rivera Case." According to the petition, Mr. Chaparro's involvement was alleged to have been as the supplier of the styrofoam containers, in which, under the pretext of exporting fish, smaller plastic boxes filled with drugs were found. Mr. Chaparro asserts that his detention was based on a mistake both of the police and the Judge in charge of the case, and alleges that this is a clear violation of the principal of the presumption of innocence set forth in the American Convention. When he was permitted to see one of the containers seized in the operation he could tell that the thickness of the bottom was much greater than in the containers that his factory produced. Further, the marks that are left by injecting the raw material do not correspond to those made by the machines in his factory. Mr. Chaparro requested that Captain Peralta request an expert from a prestigious institution that knows something about the subject to come and confirm that the container shown to him was not made by Plumavit Factory. The police requested the assistance of an expert from the Mechanical Engineering Faculty of the Technical College of the Litoral. They received the response from the expert on December 5, 1997 to the effect that the Plumavit Factory of Ecuador did not manufacture these containers.

14. According to the petitioners, the police, illegally and arbitrarily, and knowing that Mr. Chaparro had nothing to do with what they were investigating, criminally hid the results of the expert evaluation until December 10, 1997, with the sole purpose of involving him in crimes which he did not commit and, then, to take control over his property. Thereafter, they included the evaluation in the file as a loose sheet of paper. In spite of the lack of evidence tying him to the charges, as required by Article 333 No. 4 of the Code of Criminal Procedure, the judge, in the formal initiation of the proceedings charged him with being a "member of an international syndicate of drug traffickers", thereby violating his right to be presumed innocent, as guaranteed by the American Convention. The police had illegally searched the Plumavit Factory, owned by the petitioner, and a special dog was brought in that was trained to track down drugs by scent. No remains of drugs were found anywhere. Subsequently, on the day when the experts from E.S.P.O.L. performed their evaluation, police officers and technicians from the US Drug Enforcement Administration brought an Ion-Scanner to detect particles of drugs and also found no evidence of drugs anywhere in the Factory.

15. The Judge ordered three further evaluations to be carried out at the Factory. Mr. Chaparro requested that he be permitted to be present, but when the Judge was late they returned him to prison, allegedly infringing on his right to defend himself. The police suggested that he could bribe them by paying them at least two million *suces* to be allowed to wait for the judge. He refused. The judge finally arrived and carried out three further evaluations and was able to demonstrate that the seized containers did not fit into the molds used in his Factory. These tests supported the earlier findings that his factory could not have produced the containers seized.

16. Three days later, on January 8, 1998, the police with the D.E.A. experts returned with the judge to the Factory with the ION- Scanner and stated that there were vestiges of the drugs in one of the molds. Since the defense lawyers were not allowed to be present, the petitioners were unable to impugn this act that occurred 45 days after the police had taken over control of the Factory, which leads one to believe that the Ecuadorian police was planting the evidence. The Ecuadorian Drug Law of 1990 permitted the seizure of goods, which had been used for the commission of the crimes set forth in the law. Since November 15, 1997, Mr. Chaparro's Factory was seized, allegedly in an illegal and arbitrary manner, and was placed under the control of the National Drugs Council (*Consejo Nacional de Control de Sustancias Estupefacientes y Psicotropicas*, CONSEP). CONSEP rented the factory to an individual in January 1998. According to

the petition, Mr. Chaparro was financially ruined as CONSEP and the renter disposed of all the property including the machinery and office equipment.

17. Mr. Chaparro was kept in detention for one year, six months and eleven days in the Social Rehabilitation Center of Guayaquil. He was detained on November 15, 1997 and released on August 22, 1999. He had been arrested on November 15, 1997 without an arrest warrant, he was never informed of the reasons for his detention, he was held incommunicado for five days, he did not have the assistance of a defense lawyer and he was not charged for twenty-three days. The Superior Court of Guayaquil provisionally dismissed the charges against him. Following the dismissal, the Court ordered that the seized goods be returned to Mr. Chaparro.

18. Based on the foregoing, the petitioners allege that the State incurred in the following violations of the American Convention with regard to Mr. Juan Carlos Chaparro: a) violation of Article 7(2) and (3) because he was detained without a judicial arrest warrant and not in circumstances that could be termed in *flagrante delicto*; b) violation of Article 7(3), because he was subject to arbitrary imprisonment for a year, six months and eleven days for a crime which he did not commit; c) violation of Articles 5(1) and (2) because he was held in incommunicado detention for more than the 24 hours permitted under Ecuadorian law; d) violation of Article 7(5), because the State kept him in detention for more than 240 days when Ecuadorian law only allows 180 days; e) violation of Articles 7(6) and 25 because the writ of *amparo* that he presented was rejected without grounds; f) violation of Article 21(1) and (2) for having been arbitrarily and illegally stripped of his company, Plumavit Factory, without having committed any offense; and g) violation of Article 7(5) and 8(1) for not having respected the requirements of trial within a reasonable time or release. In the revised petition received on August 19, 2002, the petitioners added violation of Article 8(1) because the State failed to advise Mr. Chaparro of his right to consular assistance following his detention, pursuant to the Vienna Convention on Consular Relations, and 8(2) regarding alleged violation of the presumption of innocence.

B. Position of Mr. Lapo, the second petitioner

19. On November 15, 1999, Mr. Freddy Hernan Lapo Iñiguez was arrested with three co-workers, ostensibly in connection with a drug-trafficking operation known as the "Rivera Case." Police authorities had seized the drugs at the Simon Bolivar Airport: 14,821 grams of heroin and 353,688 grams of cocaine, camouflaged in 144 containers containing fish, property of the Marisco Oceana Maror company; the containers were destined for Miami. Mr. Lapo was arrested at 11:00 a.m. at his place of employment, Plumavit Factory, where he was employed as Production Manager. He requested the police to show him the search warrant, and the police replied that they did not have one, but having seized 400 kilos of drugs at the Airport, they were going to search and arrest whatever and whomever they wanted.

20. At approximately 4:00 p.m. Mr. Lapo and his three co-workers were taken to the No. 2 Guayaquil Regiment Police Station, where they were locked in individual cells and where they were held incommunicado for five days. They were not even permitted to make a phone call during that time.

21. Mr. Lapo was then taken to make a declaration without having been allowed to contact his lawyer. The police then informed him that he was suspected of involvement in a drug-trafficking operation known as the "Rivera Case." He was thought to have fabricated the plastic cube-shaped containers in which the drugs were found. When one of the containers in which the drugs were found was shown to him, he noted that it was constructed differently from those produced by his company. The police also sought an expert analysis, and on December 5, 1997, it was confirmed that the Plumavit Factory had not manufactured the boxes.

22. On December 8, 1997, despite the expert analysis provided by the Mechanical Engineering Faculty of the Technical College of the Litoral (E.S.P.O.L.) to the effect that the containers had not

been manufactured by the Plumavit Factory, the judge initiated the judicial proceedings. According to the petition, the police hid the E.S.P.O.L. analysis in order to implicate the petitioner and his co-workers in the crime.

23. On November 15, 1997 the petitioner's automobile was seized by the police, despite the fact that it had nothing to do with the suspected crime, and allegedly it has been dismantled. His house, which he had purchased on credit, in a middle-class neighborhood, had to be sold by his relatives due to his illegal detention and the inability of his family to keep up the payments with no income coming in, at a loss of 50% of its value. In addition, the El Niño phenomenon caused a flood in the little town in which he was living, destroying the furniture and other goods in the house, which his family had already vacated.

24. The factory in which the petitioner was employed was illegally searched by the police and a special dog was brought in that was trained to track down drugs by scent. No remains of drugs were found anywhere. No evidence tied Mr. Lapo to the crime. Despite that crucial fact, the petitioner states that Mr. Lapo was kept in detention and the judicial proceedings were initiated. Pursuant to Article 231 of the Ecuadorian Code of Criminal Procedure, the investigative stage of the proceedings may not take more than 60 days. In this case, it continued for nine months and fifteen days.

25. Mr. Lapo was kept in detention for one year, six months and eleven days in the Centro de Rehabilitación Social de Guayaquil. He had been arrested on November 15, 1997 without an arrest warrant, he was never informed of the reasons for his detention, he was held incommunicado for five days, he did not have the assistance of a defense lawyer and he was not charged for twenty-three days. He was finally released when the Superior Court of Guayaquil "ratified" the opinion of the Twelfth Criminal Prosecutor of Guayas to "definitively dismiss" the charges against him. Despite the dismissal, they refused to return the automobile and sent the judgment to the Attorney General's office where it has been paralyzed for months.

26. Based on the foregoing, the petitioner alleges that the State has committed the following violations of the American Convention with regard to Mr. Fredy Lapo Iñiguez: a) violation of Article 7(2) because he was detained without a judicial arrest warrant; b) violation of Article 7(3), because he was subject to arbitrary imprisonment for a year, six months and eleven days for a crime which he did not commit; and c) violation of Article 7(5), because the State did not comply with the time periods established by law.

C. Position of the State

1. Response of the State to Mr. Chaparro, the first petitioner

27. The State only replied once to Mr. Chaparro's petition and that was on March 22, 1999, at which time it attached the position of the Attorney General's office, dated March 17, 1999. The position of the Attorney General was that Petition 12.091 does not comply with the admissibility requirements set forth in Article 46 of the American Convention because Mr. Chaparro failed to exhaust domestic remedies before filing a petition with the Commission. In the view of the State the internal remedies in the case have not been exhausted.

28. In accordance with the jurisprudence of the Inter-American Court, the party that alleges failure to exhaust domestic remedies is obliged to set forth the remedies that must be exhausted and to indicate their efficacy. In this context, the State noted that the criminal proceedings pending before the Criminal Court of Judge Guadalupe Manrique Rossi have been proceeding normally. These proceedings have allowed the intervention of specialized experts who have issued reports that have been favorable to the petitioner, so much so that the representative of the Public Ministry has issued his opinion in which he abstains from bringing charges against Mr. Chaparro. Whether these proceedings turn out to be favorable or not to Mr. Chaparro, does not

mean that they are not the appropriate procedures to be followed. As the Inter-American Court has noted, the fact that a domestic remedy does not terminate in a favorable ruling for the petitioner does not demonstrate, alone, the lack of, or the exhaustion of all efficacious internal remedies.

29. The State suggests that Mr. Chaparro has an effective remedy in cassation, which he is at liberty to pursue once the Criminal Court issues its judgment in this case. This remedy is adequate in the sense that the Inter-American Court has noted in earlier cases, "adequate domestic remedies are those which are suitable to address an infringement of a legal right." In case the judges or courts have incurred in errors *in iudicando*, this is the adequate recourse to protect the legal situation that has been affected. Similarly, if the Supreme Court finds that the judges incurred in errors of law, it will grant cassation of the judgment and issue a new one that is in conformity with the domestic law.

30. The State further suggests that Mr. Chaparro has an additional effective remedy in a motion for revision, which he can file once a conviction is issued. This remedy is similarly adequate and effective in the opinion of the State. The State alleges that it has shown that effective remedies exist and now the burden of proof shifts to the petitioners who must demonstrate that they have exhausted the remedies available under Ecuadorian law.

31. As regards the issue of whether the judicial proceedings have been carried out within a "reasonable time," the State recalls the jurisprudence of the European Court which has maintained that the "reasonableness" must be determined in the specific context of a concrete case, that there are no generally valid criteria that may be applied to all cases. Lastly, the State argues that Mr. Chaparro enjoyed the right to defend himself in this case and had access to the courts and at no time was he impeded from exercising his right to be heard before the appropriate and competent judicial organs.

2. Response of the State to Mr. Lapo, the second petitioner

32. The State replied on September 30, 2002 and attached the position of the Attorney General's office, dated September 12, 2002, in which the Commission is requested immediately to Petition 172/99, since, in the view of the State, it does not fulfill the requirements set forth in Article 46 of the American Convention and Article 38 of the Commission's Rules of Procedure and in particular, because the facts do not reveal a possible violation of any of the articles of the American Convention.

33. The State notes that the Superior Court of Guayaquil by which Mr. Lapo obtained his liberty confirmed the dismissal and the Court found that he was not responsible for any of the crimes for which he had originally been accused. In this regard, the Ecuadorian State considers that by virtue of the "fourth instance" formula, the Commission is not competent to review the decisions of national courts that act within their spheres of competence and afford the appropriate judicial guarantees, unless it can be found that a violation of the Convention has been committed. In the view of the State Mr. Lapo had access to the entire panoply of remedies available under Ecuadorian law. Further, the State maintains that Mr. Lapo cannot argue that the proceedings were not carried out within a reasonable period of time since the jurisprudence of both the European and inter-American systems determine on a case by case basis whether the time period that has elapsed comes within the concept of "reasonable" depending on the complexity of the matter and the actions of the parties.

34. In the view of the State, the Commission is competent to declare a petition admissible and to determine whether a judgment of a national court has been issued at the margin of due process or is in apparent violation of some other right guaranteed by the Convention. In this case the State respected due process and Mr. Lapo cannot come before the Commission simply because he is not in agreement with the decision of the courts. In this case the State did not violate Articles 8

and 25 to Mr. Lapo's detriment. The State maintains that the judgments were issued within the Court's competence and that the judges were the appropriate judges to hear the matter, so that there is no reason for the Commission to review these decisions. The Commission is not an appeals court or a court of fourth instance and it is not within its functions to annul judicial decisions, but rather to safeguard that the States provide their citizens with a judicial system that guarantees due process.

35. The State argues that Mr. Lapo presented his complaint to the Commission on June 7, 2002; eight months after the Superior Court dismissed the charges and ordered his release. Article 46(1)(b) of the American Convention provides that the complaint must be presented within 6 months of the notification of the Court's judgment, and consequently, the Commission should declare Petition 172/99 inadmissible. In summary, the State requests that the Commission declare Petition 172/99 inadmissible because it does not fulfill the requisites set forth in Article 46 of the American Convention and in Article 38 of the Commission's Rules of Procedure.

IV. CONSOLIDATION OF THE PETITIONS

36. The two petitions, P. 12.091, regarding Mr. Chaparro and P. 172/99, regarding Mr. Lapo, involve the same factual situation, and for that reason, the Commission, pursuant to Article 29(1)(d) of its Rules of Procedure, has decided to join the two petitions and to process them together.

V. ANALYSIS OF ADMISSIBILITY

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

1. As regards both petitions

36. The petitioner is entitled to lodge petitions with the IACHR under Article 44 of the American Convention. The petition cites as an alleged victim an individual on whose behalf Ecuador undertook to respect and ensure the rights recognized in the American Convention. Insofar as the State is concerned, the Commission finds that Ecuador has been a state party to the American Convention since December 28, 1977, when it deposited its respective instrument of ratification. Accordingly, the Commission has competence *ratione personae* to examine the petition.

37. The Commission has competence *ratione loci* to take up the petition because it claims violations of rights protected in the American Convention that allegedly took place in the territory of a state party to that treaty.

38. The Commission has competence *ratione temporis* inasmuch as the duty to respect and ensure the rights recognized in the American Convention was in force for the State at the time when the alleged violations contained in the petition are said to have occurred.

39. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights set forth in and protected by the American Convention.

B. Other admissibility requirements for the petition

1. Exhaustion of domestic remedies

a. As regards the petition of Mr. Chaparro, the first petitioner

40. The State disputes that domestic remedies have been exhausted in this case, and argues that the petitioner failed to invoke remedies which were available to him such as cassation or a motion

for revision. Since the petitioner was released and the Fourth Chamber of the Superior Court “provisionally” dismissed the charges against him, following the sole response of the State dated March 17, 1999; the Commission is of the view that domestic remedies have been exhausted in this case.

b. As regards the petition of Mr. Lapo, the second petitioner

41. The State does not dispute that domestic remedies have been exhausted in this case, and that exhaustion was completed with the issuance of the Superior Court’s definitive dismissal order on October 26, 2001 and the release of the petitioner. Consequently, the Commission concludes that domestic remedies have been exhausted in this case.

2. Deadline for lodging the petition

a. As regards the petition of Mr. Chaparro, the first petitioner

42. Article 46(1)(b) of the American Convention provides that the petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment that exhausted domestic remedies. The petitioner presented his complaint to the Commission on September 8, 1998 alleging that he was illegally and arbitrarily detained. The Ecuadorian Courts did not dismiss the charges against Mr. Chaparro for lack of evidence to inculcate him until November 12, 2001. Therefore, the petition was presented before the deadline.

b. As regards the petition of Mr. Lapo, the second petitioner

43. Article 46(1)(b) of the American Convention provides that the petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment that exhausted domestic remedies. The petitioner presented his complaint to the Commission on April 14, 1999. The complaint was under study and communicated to the State on June 7, 2002 and the State incorrectly concluded that the petition had not been presented until that date, whereas, in fact, it was within the deadline.

3. Duplication of proceedings and *res judicata*

a. As regards both petitions

44. The Commission finds that the subject matter of the petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements set forth in Articles 46(1)(c) have also been met.

4. Characterization of the facts alleged

a. As regards the petition of Mr. Chaparro, the first petitioner

45 The Commission finds that the allegations, if proven, could establish a violation of the rights recognized in Articles 5 and 7 of the American Convention. The State’s response does not address the issues raised under Articles 5 and 7, but limits itself to an allegation that Mr. Chaparro was afforded access to all available remedies under domestic law and that the proceedings respected the guarantees of due process. The petitioners further argue an alleged violation of Articles 8 and 25. An alleged arbitrary detention, which is not cured by available domestic remedies, may implicate violations of Articles 8 and 25 as regards the failure to afford access to a simple and prompt remedy for the detention and the guarantees of due process. The Commission frames the issue presented in this case as the right of the State, under the American Convention, to hold an individual in detention for more than eighteen months, when, as the petitioner maintains, there is

not a shred of evidence linking the individual to the alleged crime. The Commission considers at this point in the proceedings that the detention of Mr. Chaparro, without a warrant, holding him incommunicado for a period of time longer than that permitted under law and without access to a lawyer may disclose a violation of Articles 5 and 7 of the Convention. The determination as to whether the State had reasonable grounds to link him to the alleged crime and whether the detention was arbitrary are issues pending a full briefing on the merits in this case. In addition, Mr. Chaparro alleges that he was financially ruined, given that the State seized control of his Factory shortly after he was detained. Mr. Chaparro alleges that the seizure of his factory occurred in violation of the Drug Law and of the American Convention, since the law provides that the goods utilized in the commission of the crime are to be seized. The factory was seized without there ever having been a judgment finding Mr. Chaparro guilty of any crime under the law, in contradiction of his right to a presumption of innocence in violation of Articles 8(2) and his right to property, set forth in Article 21 of the Convention.

b. As regards the petition of Mr. Lapo, the second petitioner

46. The Commission finds that the allegations, if proven, could establish a violation of the rights recognized in Article 7 of the American Convention to the detriment of Mr. Lapo. The State's response does not address the issues raised under Article 7, but limits itself to an allegation that Mr. Lapo was afforded access to all available remedies under domestic law and that the proceedings respected the guarantees of due process. The State argues Articles 8 and 25, which are not raised by Mr. Lapo. An alleged arbitrary detention that is not cured by available domestic remedies may implicate violations of Articles 8 and 25 as regards the failure to afford access to a simple and prompt remedy for the detention and the guarantees of due process. The Commission frames the issue presented in this case as the right of the State, under the American Convention, to hold an individual in detention for more than eighteen months, when, as Mr. Lapo maintains, there is not a shred of evidence linking the individual to the alleged crime. The Commission considers at this point in the proceedings that the detention of Mr. Lapo, without a warrant, holding him incommunicado for a period of time longer than that permitted under law and without access to a lawyer may disclose a violation of Article 7 of the Convention. The determination as to whether the State had reasonable grounds to link Mr. Lapo to the alleged crime and whether the detention was arbitrary are issues pending a full briefing on the merits in this case.

VI. CONCLUSION

47. Based on the factual and legal arguments given above and without prejudging the merits of the matter, the Commission concludes that this case meets the admissibility requirements set forth in Article 46 of the American Convention.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible as regards Article 5, 7, 8, 21 and 25 of the American Convention read in conjunction with Article 1(1) as regards Mr. Chaparro, the first petitioner.
2. To declare this case admissible as regards Article 7, 8 and 25 of the American Convention read in conjunction with Article 1(1) as regards Mr. Lapo, the second petitioner.
3. To transmit this report to the two petitioners and to the State.
4. To continue with the analysis of merits in this case.
5. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on this the 22nd day of October 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán Second Vice-President, and Commission member Robert K. Goldman.