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BACKGROUND:

1. On January 12, 1978, the Commission's Executive Secretariat received a note dated the 7th of the same month, denouncing that due to Mr. Juan Raul Ferreira's appearance before the Commission to report on the human rights situation of his country, the Republic of Uruguay, he had received an official communication from that country's Consulate in Washington, dated December 6, 1977, in which he is informed that the competent Uruguayan authorities did not authorize the renewal of his passport, number 169.651, which had been issued to him by the Ministry of Foreign Affairs of Uruguay on September 5, 1972.
2. Following the receipt of the complaint, the Commission, on April 7, processed it in accordance with Articles 42 and 54 of the Regulations then in force, transmitting to the Foreign Affairs Ministry of Uruguay the pertinent parts of the same and requesting that, in addition to furnishing the information it deemed appropriate, to provide "any information that would allow to determination as to whether the domestic legal remedies in this case have been exhausted or not."
3. On March 6, 1981, in compliance with the provisions of Article 39 of the new Regulations, applicable to the case in accordance with Article 49, and in view of the fact that the Government of Uruguay had not provided the information requested in the communication dated April 7, 1978, the Commission approved Resolution 22/81 which declared that in the proceedings "the Government of Uruguay violated Article VIII (right to residence and movement) of the American Declaration of the Rights and Duties of Man;" it recommended that the Uruguayan Government: a) renew the passport of Mr. Juan R. Ferreira and allow him to enter his country; and b) inform the Commission within sixty days of the measures adopted to implement this recommendation; it resolved that the resolution would be included in the Commission's Annual Report "without prejudice to the fact that the Commission may reconsider the case in light of the measures adopted by the Government."
4. Resolution 22/81 was transmitted to the Government of Uruguay through communications to the Foreign Affairs Ministry and to the Ambassador to the Organization of American States, as well as to the complainant in a communication sent to the address indicated by him. All these communications were dated March 19, 1981.

5. On May 13, 1981, shortly before the expiration of the sixty-day period, the Commission received a report furnished by the complainant stating that Mr. Ferreira's situation "remains unchanged," since in three instances the Uruguayan Consul in Washington had informed him that he did not have instructions from his Government to renew his passport. For that reason, the immigration authorities of the United States have issued him a "permanent residence" permit on grounds of "Statelessness."

6. At the same time, on the expiration day of the sixty-day period indicated in Resolution 22/81, the Commission received communication 554/81-16.B.18 (b) dated May 14, 1981, from Uruguay's Permanent Mission to the Organization of American States which transcribes a long communication from its Government where "in accordance with the provisions of Article 50, paragraph 3, of the IACHR's Regulations, it wishes to make some observations so that Resolution 22/81, dated March 6, 1981, relating to case 2711, may be reconsidered."

7. The Government of Uruguay based its petition for the resolution reconsideration on the fact that "the conclusion reached by it derives from an erroneous interpretation of the legal basis upon which it is founded, adding that "after comparing the facts described with the legal text which the Commission claims has been violated, it becomes evident that at no time have the rights of the petitioner, protected by the provisions of the aforementioned Article VIII, been affected", which according to the above communication, is demonstrated by considering Article 37, paragraph 1, of the Magna Carta of Uruguay which proclaims that "any person may enter the territory of the Republic, take residence and leave with possessions in accordance with the law and without prejudice to third parties," and by the fact that Mr. Ferreira left Uruguay of his own will and "nothing prevents him from returning to it since the fact that his passport has not been renewed does not preclude his return to the country because there is no law requiring that a Uruguayan national carry a current passport to exercise that right."

8. The pertinent parts of the above mentioned communication from the Foreign Affairs Ministry of Uruguay were transmitted to the petitioner. In a written communication dated June 19, 1981, he refuted the content of that communication and added to the charge against his government, which he accuses of having arrested him eight times since June 1973 without formal charges, in addition to searching his house when he was absent, reasons which forced him to leave the country in a way that cannot be defined as "leaving voluntarily". He also adds that he has been informed that in file 7980/81 of the Third Military Examining Magistrate of Uruguay, his capture has been ordered, for which reason he could not "reside in liberty on the national territory" if he returned to Uruguay, as the Government would want us to believe. Finally he requests that the "Government's answer be considered inappropriate, that it be requested to inform whether there is an arrest order in the mentioned file or not" and that Resolution 22/81 be ratified since an answer has been given in "the Government of Uruguay's confession that it has denied him the right to possess a Uruguayan passport."

9. The important parts of the petitioner's communication were transmitted to the Foreign Affairs Ministry of Uruguay in a note attached to that of September 3, requesting that the Government "take the steps it deems appropriate in order that the Commission may receive all the information on this case within thirty days." This request was reiterated in a written communication dated the following November 15, indicating that "if that information was not received within a reasonable time, the Commission would begin to consider the possible application of Article 39 of the Regulations."

10. The following December 16th, in communication number 1481/81-16.B.18 (b) dated two days earlier, the Permanent Mission of Uruguay to the Organization of the American States transmitted to the Commission the official note in which its Government "reiterates in full the observations made when requesting that Resolution 22/81 be reconsidered (which in essence...challenges the assertion in Resolution 22/81 that the Government of Uruguay has violated Article VIII of the American Declaration of the Rights and Duties of Man) (since) nothing prevents him (Mr. Ferreira) from returning to it (the

State of which he is a national), because the fact that his passport has not been renewed does not preclude his return to the country..." In the transcribed note, the Government adds that "the additional considerations expressed by the complainant tend to shift the matter being debated, on grounds that are different from those on which the Government of Uruguay bases its assertions," and it concludes requesting that the Commission "reconsider Resolution 22/81 abiding, with a strict sense of justice, by the factual and legal elements which truly weigh on the matter."

11. That all the prescribed steps in the processing of the foregoing complaint have been completed, with each party, complainant and the party the complaint has been lodged against, having had the opportunity to express at length their respective allegations and submit to the Commission the evidence they have deemed pertinent, thereby thoroughly completing the preliminary investigation process.

CONSIDERING:

1. That the Government of Uruguay has at no time denied, and has implicitly accepted as true, that it refused in 1977, and apparently continues to refuse to this date, the authorization required by its administrative regulations for the Consular Service of the Nation--specifically the Consulate in Washington--to renew passport 169.651 of Mr. Juan Ferreira Sienra, Uruguayan citizen with identification card 1.247.167, which had been issued to him on September 5, 1972 and which was apparently valid for five years.

2. That the Government of Uruguay maintains that, the refusal to provide a citizen or national of the State with a valid passport, does not constitute a violation of the right to residence and movement established in the Bogota Declaration since, according to the government, such citizen may return to his country, move about its territory or establish residence in it and not leave it except of his own will, adding that, of course, "only those exempt from responsibility for criminal or anti-national activities may legitimately demand the exercise of that liberty."

3. That the Government of Uruguay apparently does not lend importance to the implicit interpretation that the Commission gave to the aforementioned Article VIII when it states that said article was being violated to the detriment of Mr. Juan Ferreira, since the Government refused to renew his passport. That it was mute on this aspect, concentrating all its arguments on the fact that, according to the contentions in the official notes, the Republic of Uruguay departing from current general practice in almost all nations -- does not require a passport for entry into its territory and to remain there.

4. That even if we take that assertion by the Government of Uruguay as true, the fundamental question involved in the problem dealt with in Resolution 22/81 remains unanswered, that is, the principle valid for this case and similar cases that may arise today or tomorrow or at any other time, as to whether a government that refuses to issue valid passports to persons entitled to them, or imposes upon them conditions so severe that would in fact make them desist in the exercise of that right, complies with the obligation of respecting the right of the human being to leave his country's territory to go to that of any other State whose doors are not closed to him. That a Government that refuses to issue, renew or extend a valid passport to its nationals when they request it for travel purposes, does not respect Article VIII of the American Declaration of the Right and Duties of Man, unless a sentence or writ precludes it, or it poses conditions or obstacles of such a nature as to in fact make the person decide to surrender the exercise of his right because of the excessive moral or monetary cost in obtaining, by legitimate means, the passport required to travel from one country to another. That in our times, a passport is the most important document for identification when traveling to countries other than the State of which one is a national and, in most cases, when returning to it as well, since according to the Spanish Language Dictionary "it is the written license or dispatch issued in order to obtain free and safe passage from one nation or country to another," a definition that is consistent with that of the legal Encyclopedia Omeba edited by Doctor

Martha Oliveros, which states that a passport "is a document issued by the competent authority of a State, at the request of the interested party, in order to be able to justify his identity to foreign authorities."

[5]. That, in addition, a passport performs yet another function, which is that of allowing its bearer to purchase the tickets necessary for his transportation to another country by any land, sea or air, since none of the international passenger carriers sell tickets to persons without a valid passport for legal and commercial travel reasons that do not require an explanation.

[6]. That in modern times a passport is as essential as an identification document, that in 1919, the League of Nations and recently the United Nations, agreed to provide substitute identification documents--the Nansen Passport at that time, and passports for stateless persons and refugees in more recent times--to all those persons who, because of political events, were forced to seek exile or abandon their national homes, so that these documents might replace a passport, which under normal circumstances, constitutes the classical identification document for those who find themselves in territories other than those of their place of origin.

[7]. That the illegal, unjustified refusal of a passport to a person is, somehow a means of imposing on him a *capitis diminutio* of ridding him of the document that gives proof of his nationality, preventing him from traveling outside of his country, forcing him, by virtue of that circumstance, to remain in the country subject to the authorities restricting him to it, and is therefore a violation of the right of a persons recognized in Article VII of the American Declaration of Bogota and in Article 13 of the Universal Declaration of Paris, notwithstanding the fact that neither of those documents specifically mentions the right to a passport as the logical consequence of the right to leave the native country and return to it. The reason is obvious: the rights of a human being, which are his by virtue of the fact that he is a person, are not taken away by a strict interpretation of the grammatical meaning of the words used in both Declarations on Human Rights. Those rights are not respected if, in strict observance of the written rule, the logical or natural consequences that ensue from them are denied; the right of freedom of opinion, expression and of thought is not respected, if the administrative authorities refuse to grant the authorizations required by legislation to establish new written, oral or visual news media; the right of private persons or organizations of that nature to establish and operate educational institutions is not respected, if the certificates or diplomas granted by them under the same conditions as those granted by official institutions are not given the same recognition and treatment. It could almost be said that the "observance" of each one of the rights included in both Declarations demands a positive and specific attitude on the part of the State and its authorities in the granting of some permit or document, which are absent from the text but which are a logical consequence of its philosophical content.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. That the Government of Uruguay in its communications of May 14, and December 14, 1981, implicitly admits, by not denying it, the denounced fact that Mr. Juan Raul Ferreira has been denied and is still being denied the right to possess a Uruguayan passport.

2. That in that implicit admission, the Government of Uruguay confirms that in the case in question, it has violated Article VIII (right to residence and movement) of the American Declaration of the Rights and Duties of Man.

3. That consequently, Resolution 22/81 dated March 6, 1981, referring to Case 2711, must be confirmed and is confirmed in all its parts and reiterates to the Government of Uruguay the recommendations contained therein to provide Mr. Juan R. Ferreira with his Uruguayan passport and to inform the Commission within sixty days of the measures adopted to implement this recommendations.

4. To communicate this resolution to the Government of Uruguay and to the complainant.
5. To include this resolution in the next Commission's Annual Report to the General Assembly of the Organization of American States, in accordance with Article 50, paragraph 5, of the Commission's Regulations, without prejudice to the fact that at its next session, the Commission may reconsider the case in light of the measures adopted by the Government in this respect.