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File Number(s):	Report No. 4/84; Case No. 7848
Session:	Sixty-Second Session (11 – 18 May 1984)
Title/Style of Cause:	Luis Alfonso Resck v. Paraguay
Doc. Type:	Resolution
Decided by:	Chairman: Mr. Cesar Sepúlveda First Vice Chairman: Mr. Luis Demetrio Tinoco Castro; Members: Mr. Andrés Aguilar; Mr. Marco Gerardo Monroy Cabra; Mrs. Gilda Maciel Russomano; Mr. Luis Adolfo Siles Salinas; Mr. Bruce McColm.
Dated:	17 May 1984
Citation:	Resck v. Para., Case 7848, Inter-Am. C.H.R., Report No. 4/84, OEA/Ser.L/V/II.63, doc. 10 (1983-1984)
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## BACKGROUND:

1. In a letter dated June 26, 1981, the Inter-American Commission on Human Rights received the following petition:

On Wednesday, on the 24th day of this month, according to information that reached us from several sources, Mr. Luis Alfonso Resck, the President of the Christian Democratic Party and one of the coordinating officers of the National Agreement opposition coalition, was arrested in his house in Asuncion, Paraguay.

Mr. Resck was returning to his house after a regular meeting of the National Agreement coordination officers, and as he was about to enter it, he was intercepted by four men dressed in civilian clothing. His wife was present and asked the officials for the arrest order. They told her brusquely that there was no order and that she ought to keep quiet and not create problems. Mr. Resck did not resist the detention but before leaving he told his wife not to bring food to the jail because he intended to begin a hunger strike in protest of the illegal detention.

Luis Alfonso Resck is an educator by profession, known in the country for his severe criticism of the passive education system that deprives the students of all choice of independent thought. He has also been a political leader for many years and has a long history of being arrested and tortured. On one occasion which he denounced publicly, the torture left him with a crushed testicle.

We request you and the Commission do everything possible to secure his freedom and to request (as he will certainly want) a legal proceeding in the case in which there are charges against him.

2. In a cable dated that same day, June 26, 1981, the Commission transmitted to the Government the pertinent parts of the petition and requested all information that was deemed appropriate and stated that, in accordance with Article 31 of the Regulations of the Commission, the request for information did not constitute a prejudgment with regard to the decision on the admissibility of the petition.

3. On June 31, 1981, the Government of Paraguay replied to the request for information made by the Commission in the following terms:

Luis Alfonso Resck was detained under the authority of Article 79 of the National Constitution (state of siege). He was located at the Department of Police Investigations of the capital city while being interrogated with regard to a declaration considered injurious and subversive by the government, published under his signature as the President of the so-called Christian Democratic Party. This party is not recognized by the Central Electoral Board because it has not complied with the first requirement set by the present elections law for recognition: a list of 10,000 registered members. Resck chose to go abroad. Since Saturday, June 27, he has been in the town of Clorinda, the Argentine Republic.

4. In a note dated July 10, 1981, the pertinent parts of the Government's reply were transmitted to the petitioner who in turn replied by denying emphatically that Mr. Resck had left the country voluntarily, as the government reported, and stated that, to the contrary, Mr. Resck had been expelled by the police to the bordering city of Clorinda, Argentine, on Saturday, June 27. The petitioner added that deportation of dissident and opposition political leaders has been an illegal practice since the 1967 Constitution went into effect. Article 56 of this Constitution reads: "All inhabitants may move freely throughout national territory, change their domicile or residence, leave the republic or return to it, bring their property or remove it from the country, without any limitations, in the latter case, other than those established by law."

5. According to information received by the Commission, Mr. Resck along with other Paraguayan political leaders in exile, attempted unsuccessfully to return to the country in September, 1982 and February, 1983.

6. The Government of Paraguay, in a letter dated February 22, 1983, signed by the Deputy Secretary of Foreign Affairs, Ambassador Francisco Barreiro Maffiodo, referred to the case of Mr. Resck by remitting a clipping from the newspaper, Hoy, of that same date, February 22, 1983, in which appears an interview granted to the UPI news agency by the Minister of the Interior, Dr. Sabino Montanaro. The pertinent parts of this interview are as follows:

Asuncion, 21 (UPI): The Paraguayan Minister of the Interior, Sabino Montanaro, said that political exiles, except one whom he called "mentally unbalanced" and another whom he linked to communism, may return to Paraguay individually, but not in a group.

According to Montanaro, the "mentally unbalanced person" is the founder of the Christian Democratic Party, Luis Resck, and the person associated with Marxism is the well-known writer, Augusto Roa Bastos....

When questioned about the reason that the Christian Democratic Party was not recognized officially, Montanaro stated that it was a matter for the courts which the government "may not force to adopt a decision since the Judicial Branch is independent."

Furthermore, Montanaro questioned whether the Christian Democrats have even one percent of the electorate and stated that the founder of the party, Luis Resck, was deported because he is "mentally unbalanced" and "an inciter to rebellion."

He accused Resck of organizing students to "rise up against the government" and added that, according to intelligence services, they were preparing subversive acts and thus, "as a preventive measure, we expelled Resck....."

Montanaro stated that the other exiles may return to the country, including dissidents of the official Colorado Party, but they must do so "one by one, not in a group, to prevent a tumult and to allow us to control their activities...."

7. The Commission, noting an obvious contradiction between the statements made by the

government in its note of June 31, 1981, and the statements made by the Minister of the Interior, Sabino Montanaro, in the interview with the UPI news agency to which the preceding paragraph refers, addressed the Paraguayan Government in a letter dated June 16, 1983, in the following terms:

Ref: Cases Nc 4563, 7848 and 8027

In its last session the IACHR took up the aforementioned cases and found that there exists a contradiction between statements made by Your Distinguished Government in its letters of December 15, 1982, June 31, 1981 and August 24, 1982, pertaining to these cases, and the statements made by the Minister of the Interior, Mr. Sabino Augusto Montanaro, in his declarations to the press which appeared in the newspaper Hoy of February 22, 1983, a clipping of which was sent to the IACHR attached to a note from the Minister of Foreign Affairs signed by the Deputy Secretary of that portfolio, Ambassador Francisco Barreiro Maffiodo.

In effect, on one hand, in the notes referred to above, the government maintains that Messrs. Laino, Resck and Roa Bastos chose to leave the country after being detained for a period under the authority of Article 79 of the National Constitution, thus giving the impression that they did so voluntarily, and on the other, the Minister of the Interior states to the press that Mr. Laino was deported "for having painted political slogans on walls in the streets, an act he considered the beginning of a destabilization campaign against the government," that Luis Alfonso Resck was deported because "he is a mentally unbalanced person and an inciter to rebellion" and that the other expelled person, the writer Roa Bastos, "has ties with Soviet and Cuban elements and wanted to give a lecture at a high school and a university" and that "before he could begin to indoctrinate our youth to organize guerrilla warfare or to rise up against the government, we expelled him from the country."

In another part of his statement, the Minister adds, "the other exiles may return to the country, including the dissidents of the Colorado Party."

The petitioners have denied that the aforementioned persons left the country voluntarily. Actually, in agreement with the statements made by the Minister of the Interior, they confirmed that the aforementioned persons were forced to leave the country and have been denied permission to return. They gave as an example the case of Mr. Laino who, according to a letter whose pertinent parts were sent to the Paraguayan Government in a note dated April 5, 1983, attempted to return to the country on March 25, 1983, in a scheduled Aerolineas Argentinas flight but was forced to return to the place of embarkation in the same airplane that took him to Asuncion.

In view of the foregoing, the Commission has instructed me in particular to write to the Government of Paraguay to request information about the exact situation of Messrs. Domingo Laino, Luis Alfonso Resck and Augusto Roa Bastos. Specifically, the IACHR would like to know: If, as the Minister of the Interior states, Messrs. Laino, Resck and Roa Bastos were expelled from the country. If this is the case, the Commission would like to have a copy of the verdict handed down by the Court that ordered the expulsion of the aforementioned persons. If, to the contrary, this is not the case, the Commission would like to know on the basis of what legal provision the Paraguayan Government does not allow the aforementioned persons to enter the country.

8. To date, the Government of Paraguay has not replied to the aforementioned letter and Mr. Luis Alfonso Resck, according to information in the possession of the Commission, still remains in exile from the country.

WHEREAS:

1. The right of every person to live in his own country, to leave it, and to return when he considers it advisable, is being recognized by all international instruments that safeguard human rights, among them, the American Declaration of the Rights and Duties of Man, Article 8, of which reads:

Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

2. The Inter-American Commission on Human Rights, in taking up the problem of expulsion of nationals, has pointed out:

It is cause for alarm and concern the frequency with which the measure of expulsion of nationals is resorted to not as the exercise of an option, as some legislations provide, but as an act imposed upon the person by force and against which the person has no recourse, in violation of the right of residence and free movement established in Article 8 of the American Declaration. (Annual Report of the IACHR, 1976, p. 18).

These expulsions, administratively decreed without any type of legal proceedings, generally have been for an undetermined length of time, thus increasing even more their cruelty and irrationality, and making this sanction even more onerous than that attached to the commission of a crime which always has a sentence for a set period of time. (Annual Report of the IACHR, 1980-1981, p. 120).

3. The declarations of the Minister of the Interior, Dr. Sabino Montanaro, given to the UPI news agency and printed in the edition of the newspaper Hoy of February 22, 1983, the text of which was sent officially to the Commission by the Paraguayan Government in a note dated February 22, signed by the Deputy Secretary of Foreign Affairs, leads to the unmistakable conclusion that Mr. Luis Alfonso Resck did not voluntarily leave the country but was forced to leave his native country and remain on foreign soil against his will.

4. From the same declarations made by Minister Montanaro and the lack of a reply to the note from the Commission dated June 23, 1983, it follows that the expulsion of Mr. Luis Alfonso Resck from the country was decreed administratively without any type of legal proceedings and without recourse to any appeal, as a means of eliminating a political dissident whom the government considers a threat to its internal security.

5. The liberty of persons includes the liberty of remaining in the country of which the person is a citizen and which constitutes the center of his professional, family and social life. The expulsion of a citizen by his government, under normal circumstances, is totally excluded by current human rights norms.

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

1. To declare that the Government of Paraguay has violated Articles VIII (right to residence and movement), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Government of Paraguay:

(a) That it take the measures necessary so that Mr. Luis Alfonso Resck may return to his home country, Paraguay, and enjoy all the rights and guarantees that the Paraguayan constitution and its laws and international instruments relating to human rights confer to him;

(b) That it provide for a full and impartial investigation to determine the persons responsible for the alleged acts and impose on them the corresponding penalty in accordance with Paraguayan law;

(c) That it report to the Commission within the term of sixty days on the measures taken to put this recommendation into practice.

3. To communicate this resolution to the Government of Paraguay.

4. To publish this resolution in the Annual Report of the Commission to the General Assembly of the Organization of American States if the Government of Paraguay does not accept, within the aforementioned term, the recommendations made.