Equipo 234

MARICRUZ HINOJOZA Y OTROS

VS.

LA REPÚBLICA DE FISCALANDIA

REPRESENTANTES DEL ESTADO

ÍNDICE

BIBLIOGRAFÍA

/LEURV \ GRFXPHQWRV GH UHIHUHQFLD

&DVRV FRQWHQFLRVRV

6LVWHPD ,QWHUDPHULFDQR GH 'HUHFKRV +XPDQRV

2SLQLRQHV FRQVXOWLYDV

I. EXPOSICIÓN DE LOS HECHOS

$QWHFHGHQWHV GH OD 5HS~EOLFD GH)LVFDODQGLD

1.2 Hechos del caso

$FWXDFLRQHV DQWH HO 6LVWHPD ,QWHUDPHULFDQR GH

$ 3HWLFLyQ 0DULDQR 5H[FRQWUD HO (VWDGR GH

% 3HWLFLyQ SUHVHQWDGD SRU 0DJGDOHQD (VFREDU FRQ

& 3HWLFLyQ SUHVHQWDGD SRU 0DULFUX] +LQRMRVD \

)LVFDODQGLD

II. ANÁLISIS LEGAL DEL CASO

$QiOLVLV GH ORV DVSHFWRV SUHOLPLQDUHV GH FRPSH

)DOWD GH DJRWDPLHQWR GH ORV UHFXUVRV LQWHUQ

)DOWD GH DJRWDPLHQWR GH ORV UHFXUVRV LQWHUQRV

HO FDVR GH 0DJGDOHQD (VFREDU

0DULFUX] +LQRMRVD \ 6DQGUD GHO 0DVWUR DJRWDURQ

LQDGHFXDGD

BIBLIOGRAFÍA

1. Libros y documentos de referencia

’ &DVR +LSRWpWLFR 3iJ

’ 3UHJXQWDV $FODUDWRULDV 3iJ

’)D~QG+Hp]FWRU (O 6LVWHPD ,QWHUDPHULFDQR GH 3URW
$VSHFWRV LQVWLWXFLRQDOHV \ SURFHVDOHV ,QVWLW
,,'+ 6DQ -RVp 3iJ

’ 5HJODPHQWR GH OD &,'+ $SUREDGR SRU OD &RPLVLy
VHVLRQHV FHOHEUDGR GHO GH RFWXEUH DO GH
VHSWLHPEUH GH \ HQ VX ž SHUtRGR RUGLQDULR
PDU]R GH SDUD VX HQWUDGD HQ YLJRU HO ž GH D

’ 1DFLRQHV 8QLGDV &RQYHQFLyQ GH 9LHQD VREUH HO '
’ 3XHUWD)HUQDQGR 5HVWUHSR ¢3RGUtD GHVJORVDUVH
FXDOTXLHU PRPHQWR GHO SURFHGLPLHQWR TXH VH DG
’ &,'+ ,QIRUPH 1R 'HVDSDULFLRQHV IRU]DGDV HQ 3H
’ 5HJODPHQWR GH OD &RUWH ,'+ $SUREDGR SRU OD &RU
6HVLRQHV FHOHEUDGR GHO DO GH QRYLHPEUH GH
’ 2($ &DUWD 'HPRFUiWLFD ,QWHUDPHULFDQD DGRSW
H[WUDRUGLQDULD GH OD 2($ HQ
’ '3)/ ,QWHUYHQFLyQ HQ &DOLGDG 'H $PLFXV &XULDH SU
'HELGR 3URFHVR /D)XQGDFLyQ 'H /D

2SHQ 6RFLHW\ -XVWLFH ,QLWLDWLYH ³(VWiQGDUHV GH

3URFHVR GH (OHFFLyQ GH)LVFDO *HQHUDO GH OD 1DFL

’ &,'+ *DUDQWtDV SDUD OD LQGHSHQGHQFLD GH ODV \

IRUWDOHFLPLHQWR GHO DFFHVR D OD MXVWLFLD \ HO (

SRU OD &RPLVLyQ ,QWHUDPHULFDQD GH 'HUHFKRV +XPD

’ &RPLVLyQ GH 9HQHFLD 5HFRSLODFLyQ &RPSURPLVyQ GH 9i

9HQHFLD UHODWLYRV D ORV ILVFDOHV &RPSLODWLRQ

FRQFHUQLQJ SURVHFXWRUV 3iJ

’ &,'+ 'HPRFUDFLD \ GHUHFKRV KXPDQRV HQ 9HQH]XHOD

GLFLHPEUH GH 3iJ

’ &,0$’0’2’4&P’8RPL y1€ SGH Q8 €ÂA–WP S&@p@€•H H ‹ÁS

’ &RUWH ,'+ &DVR GHO 7ULEXQDO &RQVWLWXFLRQDO YV 3iJ

’ &RUWH ,'+ &DVR)ORU)UHLUH YV (FXDGRU ()5& 6HQ 3iJ

’ &RUWH ,'+ &DVR 9HOiVTXH] 5RGUtJXH] YV +RQGXUDV 3iJ

’ &RUWH ,'+ &DVR %DHQD 5LFDUGR YV 3DQDPi)53 6HQ 3iJ

’ &RUWH,'+ 0HMtD ,GURYR YV (FXDGRU (3)5& 6HQWHQ

’ &RUWH,'+ &DVR %ÁZDU0U’HlWR /HLYD Y

0i’ 2.2 i’Sistema Europeo de Derechos Humanos i’

1.2 Hechos del caso

/D &RQVWLWXFLyQ GH QR HVWDEOHFH OD GXUDFLyQ G
VH KDQ GHWHUPLQDGR GLVSRVLFLRQHV WUDQVLWRULDV
RFXSDQGR DOWRV FDUJRV S~EOLFRV GXUDQWH OD WUDQV
VHU UDWLILFDGRV HQ VXV FDUJRV EDMR FLHUWRV UHTXLVL
6LQ HPEDUJR \ HQ HO FRQWH[WR GH OD JXHUUD
-XVWLFLD IXHURQ UHPRYLGRV GH VXV FDUJRV SRU OR FX
SHUPLWLU HO IXQFLRQDPLHQWR GHO 3RGHU -XGLFLDO 5HF
OD /H\ GH -XQWDV GH 3RVWXODFLyQ IXHURQ QRPEUDGRV D
OD $VDPEOHD /HJLVODWLYD

3RU RWUR ODGR MXULVSUXGHQFLD DVHQWDGD SRU OD &
KD GHWHUPLQDGR TXH FXDQGR OD &DUWD 0DJQD QR HVS
IXQFLRQDULR S~EOLFR GHEH HQWHQGHUVH TXH HV YLWDO

(O 3UHVLGHQWH DFWXDO GHQWUR GHO PDUFR GH VXV

KD OODPDGR D FRQIRUPDU XQD -XQWD GH 3RVWXODF
*HQHUDO GHO (VWDGR WHQLHQGR HQ FXHQWD TXH OD 6UD
IXQFLRQHV GH)LVFDO *HQHUDO FRQ XQ PDQGDWR WUDQVL

8QD YH] FRQIRUPDGD OD -XQWD GH 3RVWXODFLyQ SRV
S~EOLFDPHQWH D OD FLXGDGDQtD SDUD FRQFXUVDU DO F

&DVR +LSRWpWLFR SiUU
&DVR +LSRWpWLFR SiUU
3UHJXQWD $FODUDWRULD 1 ƒ
&DVR +LSRWpWLFR SiUU
&DVR +LSRWpWLFR SiUU

SXEOLFDGR HO FURQRJUDPD GH GLFKR SURFHVR -XQWD KD SX

SRUWDO ZHE GH S~EOLFR DFFHVR ORV SHUILOHV ELRJUiILF

$Vt WDPELpQ KD SXEOLFDGR ORV DFXHUGRV DVHQWDGRV E

D OD SUHQVD \ RUJDQL]DFLRQHV GH VRFLHGDG FLYLO HQ

FURQRJUDPD GH GLFKR SURFHVR

6LQ HPEDUJR ODV SRVWXODQWHV 0DULFUX] +LQRMRVD

ILVFDO JHQHUDO GHO (VWDGR SRU VX SDUWH VRVWXYLHURQ FRQ HVW

IDOWDV HQ VXV IXQFLRQHV \ OOHYDED XQD([DLEVWHLHQGRDOH

UHFXUVR GH UHFRQVWUXFFLyQ TXHUDOD GHFLVLyQ GHO 3

YtFWLPD GHFLGLy QR XWLOL]DU HO UHFXUVR SUHYLVWR HQ

3RU RWUD SDUWH 0DJGDOHQD (VFREDU TXLHQ VH HQFR

(VWDGR SUHVHQWy LQGDGGHPDSWRS1LQQLVWUDWLYR FRQV

TXH OODPDED D FRQFXUVR SDUD RFXSDU GLFKR FDUJR HV

OD &RUWH SRUTXH DIHFWDED GHUHFKRV GH WHUFHURV TX

RSRUWXQLGDGHIHQVD DO DIHFWDGR HQ FXHVWLyQ (Q OR

SUHVHQWDGD SRU +LQRMRVD \ GHO 0DVWUR HVWD WDPEL

GHFLVLRQHV GHO 3RGHU (MHFXWLYR (O GH GLFLHPEU
DWULEX\HQGR UHVSRQVDELOLGDG DO (VWDGR HQ ,QIRUPH
YLRODFLyQ GH ORV DUWtFXORV HQ UHODFLyQ DO
IXH QRWLILFDGR DO (VWDGR \ OXHJR SXHVWR DQWH MXULV
DFXPXODGD MXQWR D ODV SHWLFLRQHV TXH SUHFHGHQ

II. AN ÁLISIS LEGAL DEL CASO

1 Análisis de los aspectos preliminares de competencia y admisibilidad

(Q OR TXH VH UHILHUH D OD FRPSHWHQFLD GH OD +RQRU
VH VRVWLHQH TXH HVWH 7ULEXQDO HV FRPSHWHQWH SDUD
&$'+P€ ð0

VHU VXVWDQFLDGRV GH FRQIRUPLGDG FRQ ODV UHJODV GH
JDUDQWL]D SXHV HO OLEUH \ SOHQR HMHUFLFLR GH ORV G
MXULVGLFFLyQ $UW (Q HVH VHQWLGR D FRQWLQXDFLy
SHWLFLRQHV GH ODV SUHVXQWDV YtFWLPDV

A. Falta de agotamiento de los recursos internos al momento de interponerse la petición en el caso de Magdalena Escobar

&RQ SRVWHULRULGDG D OD HQWUDGD HQ YLJHQFLD GH G
GH OR GLVSXHVWR HQ HOOD ORV PDQGDWRV GH ODV DXW
SXHV HO GH MXQLR GHO HO 3UHVLGHQWH GH OD 5
FUHDU -XQWD GH 3RVWXODFLyQ LQWHJUDGD SRU GLYHUVR
HIHFWRV GH OOHYDU DGHODQWH HO SURFHVRDGH*RQHUXO
GHO (VWDGR TXH KDVWD HO GH VHSWLHPEUH RFXSy 0
SURFHVR QR LPSOLFDED GHVWLWXFLyQ R UHPRFLyQ GH 0D
VHJ~Q ODV QRUPDV HVWDEOHFLGDV HQ OD &RQVWLWXFLyQ
ORV UHTXLVLWRV HVWDEOHFLGRV SDUD HMHUFHUOR

L Q W H U S R Q H U S H W L F L y Q J H Q H U D Q G R X Q S U R F H V R S D U D O H

FDVR DO 7ULEXQDO GH PDQHUD LQFRQIRUPH [DVHPXSRQHD
DUURJiQGRVH DWULEXFLRQHV TXH FRUUHVSRQGHQ DO +RQ

6HJ~Q VH GHVSUHQGH GH ORV KHFKRV GHO FDVR OD &R

0DULDQR 5H[3HWLFLRQD HQ (VFREDU 0\3UHWRULy+QLQRMI
\ 2WUDV WUDPLWiQGRVH SRU VHSDUDGR GHFODUDQGR VX

UHVSHFWLYDPHQWH DVt PLVPR ORV IRQGRV HQ IH
WDPELpQ UHVSHFWLYDPHQWH SRVWHULRUPHQWH D HVWR
VRPHWHUORV D OD MXULVGLFFLyQ GH OD &RUWH FRQMXQ
SRVWHULRU D OD HWDSD GH DGPLVLELOLGDG \ GH IRQGR
SUHVHQWDGR REMHFLyQTXHGVDQGRDFXHUGRFRQXFORDFLyFXHQFLD YH
(VWDGR GH SUHVHQWDU VXV REVHUYDFLRQHV VREUH GLFKR

(O DUWtFXOR GHO UHJODPHQWRGRHV ORP&RSLHWLyQLRQ
VREUH KHFKRV VLPLODUHV LQYROXFUDQ D ODV PLVPDV
FRQGXFWD OD &RPLVLyQ ODV SRGUi DFXPXODU \ WUDPLWD

&RQ UHODFLyQ DO FDVR HQ FXHVWLyQ ORV KHFKRV TX
0DULDQRRR5HXQ ODGR ODV GH 0DJGDOHQD (VFREDU \ 0DULD
JXDUGDQ UHODFLyQ XQDV FRQ RWUDV QL LQYROXFUDQ D
GLDPHWUDOPHQWH GLIHUHQWHV QR VH FRPSUHQGH
GHO SURRHDVRHLXHE•pUD @0)\ T`€@L PH LD Q5HyQ UP `à€P

SUHYLVWDV HQ OD &RQYHQFLyQ VREUH HO WUiILFR ,QWHUQDFLRQDO

DUWtFXOR GHO UHJODPHQWR KDEOD GH SHWLFLRQHV

DUWtFXOR PHQFLRQD TXH

2.1 Fiscalandia no violó el derecho a la Libertad de expresión (Art 13) en relación con el artículo 1.1 de la Convención en perjuicio de Maricruz Hinojosa y Sandra del Mastro.

/D &RUWH KD FRQVLGHUDGR D WUDYpV GH VX MXULVSU

SLHGUD DQJXODU HQGHDXHQDLVWWHFQHFLDGRQWHDLPRXHQGHQHG

/R H[SXHVWR DSXQWD D OD FRQFOXVLyQ GH TXH HO SU
*HQHUDO HQ WRGDV VXV HWDSDV VH OOHYy DGHODQWH FR
HQGH HVWDyQ HSUHVDHQWDFLQWDGD OD SRVWXUD \ KDFH
JDUDQWL]DGR HQ WRGR PRPHQWR HO GHUHFKR GH DFFHVR

(Q HO FDVR FRQFUHWR VH DOHJD OD YLRODFLyQ GHO G
TXHDULFUX] +LQRMRVD GHO 0DVWUR QR IXHURQ VHOHFFLR
SDUD RFXSDU HO FDUJR GH)LVFDO *HQHUDO GH)LVFDO
UHFLELGR H[SOLFDFLRQHV VREUH ODV UD]RQHV SRU ODV F

6HJ~Q ODV UHJODV GHO GHUHFKR LQWHUQDFLRQDOGRS~E
KHFKR LQWHUQDFLRQDOPHQWH LOtFLWR GHO (VWDGR JHQ
DWULEXLEOH DO HVWDGR HV QHFHVDULR TXH FRQFXUUDQ
(V DWULEXLEOH DO (VWDGR VHJ~Q HO GHUHFKR LQWHUQD
REOLJDFLyQ LQWHUQDFLRQDO GHO (VWDGR

'RV DSHFWRV VXPDGRV KDFHQ OD UHVSRQVDELOLGDG
XQD SHDWWHUQDEXLEOH DO (VWDGR \ HO DSHFWR REMHWLYR
KHFKR GHO (VWDGR FRQ OD FRQGXFWD H[LJLGD SRU XQD R

(O $UWtFXOR GH OD &RQYHQFLyQ SURWHJH HO GHUH
DFFHVR D OD LQIRUPDFLyQ EDMR HO FRQWURO GHO (VWDG

³GLVFULPLQDFLyQ $: HQGHWDOOH OD GLVFULPLQDFLyQ FRQWUD GLVWLQFLyQ H[FOXVLyQ R UHVWULFFLyQ EDVDGD HQ HO PHQRVFDEDU R DQXODU HO UHFRQRFLPLHQWR JRFH R HMHUFLFLR VREUH OD EDVH GH OD LJXDOGDG GHO KRPEUH Y OD PXMHU GH ORV GHUHFKRV KXPDQRV \ GH ODV OLEHUWDGHV IXQGDPHQWDOHV HQ ODV HVIHUDV SROtWLFD HFRQyPLFD \ VRFLDO´

$O UHVSHFWR OD &RUWH KD GHWHUPLQDGR TXH ³>«@ SURWHFFLyQ DQWH OD OH\ \ QR *pQHURV VH SUHVHQWDQ FLyQ VREUH WHpQ WRGR HO DQGDPLDMH MXUtGLFR GHO RUGHQ S~EOLFR Q IXQGDPHQWDO TXH SHUPHD WRGR RFRQVLGHUDQGR GHO DQWR MX LJXDOGDG \ SRU FRUUHODFLyQ HO GHUHFKR D QR VHU GLV GHQWURVWHDGR GH)LVFDODQGLD (Q HIHFWR HO (VWDGR K HO ILQ GH FXPSOLU ODV REOLJDFLRQHV HQ GLFKD PDWHU 3DULGDG GH *pQHUR TXH HVWi VLHQGR HVWXGLDGD SRU

TXH QR VH KDQ DIHFWDGR ORV GHUHFKRV GH OD VXSXHV

VLJXLHQWHV TXH KD KHFKR OD &RUWH,'+ VREUH OD JDUDQ

/D &RUWH HQ VX MXULVSUXGHQFLD KD VHxDODGR TXH HO GHUHFKR

UHODWLYRV D OD LQGHSHQGHQFLD GH OD MXGLFDWXUD KD

LQGHSHQGHQFLD MXGLFLDO XQ DGHFXDGR SURFHVR GH QR

JDUDQWtD FRQWUD SUHVLRQHV H LQWHUIHUHQFLDV UHIHULUHPR

FDUJR WHQLHQGR HQ FXHQWD TXH 0DJGDOHQD (VFREDU

³7UDQVLWRULD´ \ OD &RUWH,'+ KD PDQLIHVWDGR TXH OD

FRQGXFWDV RLOHJDOHV WDO FRPR HO FXPSOLPLHQWR GH X

FRQFOXVLyQ GH XQ FRQFXUVR S~EOLFR GH RSRVLFLyQ \ D

MXH] SURYLVRULR FRQ FDUiFWHU SHUPDQHQWH´ $Vt OD

iPELWR GH ORV MXHFHV SURYLVRULRV HQ OD H[LJHQFLD

EHQHILFLRV SURSLRV GH OD SHUPDQHQFLD KDVWD WDQWR

OHJDO D VX PDQGDWR

IRUPDV GH FRQWURO SRU SDUWH GHO SRGHU SROtWLFR D
WRGR FDVR GLFKD DXWRQRPtD LPSOLFD OD REOLJDFLyQ G
GHO XVR GH ORV UHFXUVRV S~EOLFRV 7HUFHUR H[LVWH

GH OD WUDQVLFLyQ GHPRFUiWLFD 'HPRVWUDQGR GH HVWD

JR]D HO 3RGHU -XGLFLDO GH OD 5HS~EOLFD GH)LVFDODQG

&RPSOHPHQWDULDPHQWH OD &RUWH,'+ LQGLFD TXH XQ

GH ORV MXHFHV GHEH HVWDEOHFHUVH D SDUWLU GH HOH

LQGLTXHQ TXH VH HVWi HIHFWLYDPHQWH DQWH XQ FDVR H

LQIOXHQFLDU SRU DVSHFWRV R FULWHULRV DMHQRV D ODV

6H LQILHUH SXHV TXH ORV PDJLVWUDGRV GHO 3RGI

Fiscalandia no violó el derecho a garantías judiciales (artículo 8) y protección judicial

(artículo 25) en relación al artículo 1.1 de la Convención en perjuicio de Maricruz Hinojosa

sHUH`€QWDVYDÀLPDV `€ToRV 0-SyL`ÀDOH`0H•H``LA“RV D ODV

sHUH`0RV °SaPD RP ¿DR•ÀDcROR RRÄ ORV `€DOH`2

Hõ]H`€T #a ` p

w H P H @ H U L

@ E H WH U B @ p D P 0

(Q SULPHU WpUPLQR OD PLVPD QR JR]DED GH LQDPRYL
DQWHULRUPHQWH $ VX YH] VH KD GHPRVWUDGR TXH HO
XQD UHPRFLyQ R GHVWLWXFLyQ WHQLHQGR HQ FXHQWD OL
$VDPEOHD &RQVWLWX\HQWH GHO WXYR HQ VX PRPHQW
QR EUDU MXHFHV WUDQVLWRULRV SDUD SHUPLWLU HO IXQF
IXH QRPEUDGD OD FRPSRVLFLyQ GHILQLWLYD \ DFWXDO SL
DFXHUGR D OR TXH HVWDEOHFH OD /H\ QR XXEQRWDV]RQHV
LQLFLDU XQ SURFHVR GH UHPRFLyQ R GHVWLWXFLyQ FXDQ
FDUJR \ HQ FDPELR SRGtD HQ LJXDOGDG GH FRQGLFLRQ
RSRVLFLyQ DELHUWR SDUD FXEULU HO FDUJR GH)LVFDO *

'HO H[DPHQ DQWHULRU HVWD UHSUHVHQWDFLyQ GHPXH
GHMDGR GH FXPSOLU FRQ VXV GHEHUHV FRQYHQFLRQDOHV
HQ ORV DUWtFXORV \ GH OD &$'+ HQ UHODFLyQ DO DUW

2.3.4 Vulneración respecto al derecho a garantías judiciales (artículo 8.1) y/o protección judicial (artículo 25) en relación al artículo 1.1 y 2 de la Convención en perjuicio de Mariano Rex.

/D &RUWH KD HVWLPDGR TXH HO DUWtFXOR UHFRQRF
DEDUFD ODV FRQGLFLRQHV TXH GHEHQ FXPSOLUVH SDUD D
GHUHFKRV X REOLJDFLRQHV HVWiQ OHDKDR LFRQWUSHHDFLyQ

&RUWH,2,S+LQLyQ &RQVXOWLYD2W tDV MXGLFLDOHV HQ HVWDGRV GH H
&RQYHQFLyQ $PHULFDQD VREUH 'HUHFKRV +XPDQRV GH RFWXEU

+D GHVWDFDGR OD &RUWH,'+ TXH ORV GLIHUHQWHV VL
HVWULFWRV WDQWR SDUD HO QRPEUDPLHQWR GH MXHFHV
SXQWR KD DILUPDGR TXH OD DXWRULGDG D FDUJR GHO
FRQGXFWRU SDVH HO PRPHQWH HQ HO SURFHGLPLHQWR HVWDEOHF
GHO GHUHFKR GH GHIHQVD

(O (VW)DLVRGHDQGLD QR HV UHVSRQVDEOH SRU OD YLROD
DUWtFXORV \ GH OD &$'+ HQ UHODFLyQ FRQ HO
SHUMXLFLR GH 0DULFUX] +LQRMRVD \ 6DQGUD GHO 0DV
UHVSRQVDELOLGDG GH OD YLRODFLyQ GH ORV GHUHFKRV S
DO DUWtFXOR GH OD &$'+ HQ SHUMXLFLR GH 0DJGDOHQD
$FHSWDU \ YDORUDU HO UHFRQRFLPLHQWR SDUFLDO GH
YXOQHUDFLyQ GH ORV DUWtFXORV \ HQ UHODFLyQ D C
GH 0DULDQR 5H[\ DFHSWDU ODV UHSDUDFLRQHV RIUHFLGD