

Caso Maricruz Hinojoza y otras vs. la República de Fiscalandia

Representantes del Estado de Fiscalandia.

ÍNDICE

TABLA DE ABREVIATURAS	3
BIBLIOGRAFÍA.	4
1. EXPOSICIÓN DE LOS HECHOS DEL CASO.	10
2.- ANÁLISIS LEGAL	12
2.1 Estado de Derecho Constitucional	12
2.2 EXCEPCIONES PRELIMINARES	15
2.2.1. Respecto a Mariano Rex.	16
2.2.2. Respecto a Maricruz Hinojoza y Sandra del Mastro	17
2.3. CUESTIONES DE FONDO	20
2.3.1. Respecto a Mariano Rex	20
2.3.1.1. Arts. 8 y 25 CADH	20
2.3.2. Respecto a Magdalena Escobar	28
2.3.2.1 Arts 8 y 25 CADH	28
2.2.2.2. Art. 24 CADH	32
2.3.3 RESPECTO MARICRUZ HINOJOSA Y OTRAS	34
2.3.3.1 Art. 13 CADH	34
2.3.3.2 Art. 24 CADH	35
2.3.3.3 Arts. 8 y 25 CADH	38
3. PETITORIO	42

TABLA DE ABREVIATURAS

&RQYHQFLyQ \$PHULFDQD VREUH 'HUHFKR'	&\$'+
&RPLVLyQ ,QWHUDPHULFDQD GH 'HUHFKR'	&,'+
&RPLVLyQ ,QWHUQDFLRQDO FRQWUD OD ,	&,&),6
&RUWH (XURSHD 7ULEXQDO (XURSHR GH	&(7('+
&RUWH ,QWHUDPHULFDQD GH 'HUHFKR'V +	&R,'+
&RUWH 6XSUHPD GH -XVWLFLD GH)LVFDO	&6-
'HUHFKR'V +XPDQRV	''++
(VWDGR GH 'HUHFKR	('
)LVFDO *HQHUDO)*
+HFKR'V GHO &DVR	+&
-XQWD GH 3RVWXODFLyQ	-3
3UHJXQWDV \ 5HVSXHVDV \$FODUDWRULI	35\$
5HS~EOLFD GH)LVFDODQGLD	5)

BIBLIOGRAFÍA.

A. DOCTRINA.

" 'È\$= ((VWDGR GH 'HUHFKR \ VRFLHGDG GHPRFUIW
ODGULG

" '25\$'2 3255\$6 - /D OXFKD SRU OD &RQVWLWXFLYQ
/DZ HQ OD ,QJODWHUUD GHO 6LJOR ;9,, &HQVURHG
ODGULG

")\$Ò1' (= /('(60\$ + El Sistema Interamericano de Protección de los
Derechos Humanos, (G • 6DQ -RVp &RVWD 5LFD ,QVWLWXWR
+XPDQRV SS

")\$Ò1' (= /('(60\$ + ~~AD~~p

" &R,'+ &DVR GH 3/D 3DQHO %ODQFD' 3DQLDJXD 0RUDO
6HQWHQFLD GH GH PDUJR GH 6HULH & 1R SiJ
" &R,'+ &DVR 5HYHUyQ 7UXMLOOR 9V 9HQH]XHOD (
5HSDUDFLRQHV \ &RVWDXQLRQHWHQFLDGHGHH &GHRM Si
" &R,'+ &DVR 7LEL 9V (FXDGRU ([FHSFLRQHV 3UHOLPLQ
6HQWHQFLD GH GH VHSWLHPEUH GH 6HULH & 1R
" &R,P+ À'DVRHGW@7@L'EX@DO &RQVWLWXFLRQDO 9V 3H
6 HQF4ÀD GH 6 Ð @ `

1. EXPOSICIÓN DE LOS HECHOS DEL CASO.

Contexto de la RF.

(Q OD 5) FX\R VLVWHPD SROtWLFR HV GHPRFUiWLFR XQLW
SUHVLGHQFLDOLVWD VH HVWDEOHFLy OD &RQVWLWXFLyQ T
GH GHUURFDU FRQ XQ JROSH GH HDVWLGR DOWMxSRHHQLGθQS
DxRV (O JRELHUQR GHO QXHYR SUHVLGHQWH -DYLHU S
FXPSOLU FRQ OD FRQVWLWXFLyQ \ SDUD HYLWDU OD FR
OLQHDPLHQWRV GH OD &QQQQ 0WXU0W , @DUHpQhJWP @L

/D FRQYRFDWRULD GH)* IXH DSUREDGD SRU OD -3 OD FX
UHFRQRFLGRV HQUUH HOORV GHFDQRV GH XQLYHUVLGDGH
GH \$ERJDGRV GH)LVFDODQGLD UHSUHVHQWDQWHV GHO 3R
'HVSXpV GHO SURFHVR GH VHOHFFLyQ HQ OD -3 FRQVLVWH
GH DQWHFHGHQWHV \ HQWUHYLVWDV VH GHOLEHUy TXH C
FRQIRUPDGD SRU 'RPLQJR 0DUWtQH] \ ~~FRQVJGR EDQWLG~~
)* GH OD 5) PLVPR TXH HUD HO HQWRQFHV -HIH GHO iUJDC
TXLHQ DGHPiV REWXYR UHVXOWDGRV FRQVLGHUDEOHPHQW
\ HYDOXDFLyQ GH DQWHFHGHQWHV ~~FRQVJGR EDQWLG~~ HO DFFHV
FRPR)* HQWH DXWyQRPR GHO 3RGHU &RQWUDORU
\$KRUD ELHQ WRPDQGR HQ FXHQWD DO 3RGHU -XGLFLDO GH
WRPDGR OD GHFLVLyQ GH GHVWLGL ~~FRQVJGR EDQWLG~~
HO TXH WXYR OD RSRUWXQLGDG GH HMFHFHU VX GHUHFKR
SRU HO LQFXPSOLPLHQWR JUDYH GH OD REOLJDFLyQ G
(VSHFtILFDPHQWH HQ HO FDVR GH XQ DPSDUR SUHVHQWD
2EUHJyQ (V LPSRUWDQWH WRPDU HQ FRQVLGHUDFLyQ TXH
GHQXQFLDV GLVFLSOLQDULDV SRU GHFLVLRQHV WRPDGDV

EDMR VX MXULVGLFFLyQ LQFOXLRV 0DULDQR 5H[0DJGDO
0DVWUR

2.2EXCEPCIONES PRELIMINARES

Admisibilidad y competencia

'H DFXHUGR FRQ HO DUWtFXOR D GH OD &,\$'+ XQR GH
DGPLWLGD SRU OD &,'+ HV HO DJRWDPLHQWR GH ORV 5,

SRUTXH WLHQH OD FDSDFLGDG GH SURGXFLU 1HROUEHVVXDOQWDF
WDPELpQ H[LVWH OD SRVLELOLGDG GH DFXGLU DO UHFUV
WRGD DFFLyQ X RPLVLyQ SRU SDUWH GH FXDOTXLHU IXQF
YLROH ORV ''++ \ OLEHUWDGHV IXQGDPSEXWDFRVTXHFRLQRI
VLQWLy DIHFWDGRV VXV ''++ WHQtD OD SRVLELOLGDG GH
RSRUWXQL

RS

WR @HH0`€ 0cSH

HQ TXH WDQWR ODV GHFLVLRQHV GHO SUHVLGHQWH FRPR
FRQWURO \D TXH HQ HO SULPHU FDVR VH WUDWD GH XQD
VHJXQGR FDFRQRV DHRV DQWH HQWLGdGHV LQWHUPHGldV
LQGHSHQGLHQWH FX\RV PLHPEURV QR HVWiq VXMHWRV DC
GH IXQFLRQDULRV S~EOLFRV VHJ~Q VH HVWDEOHFH HQ OD

6LQ HPEDUJR ODV SHWLFLRQDULDV GHVR\HURQ ORV DUJX
SUHVHQWDURQ UHFxUVR GH DSHODFLyQ DQWH OD 6HJXQGD
H[WUDRUGLQDULR DQWH OD &6- VLHQGR HQ DPEDV VLW
DUJXPHQWRV TXH OD UHVROXFLyQ TXH UH(FKSRUHQVQR LQR

UHP P

2.3. CUESTIONES DE FONDO

2.3.1. Respecto a Mariano Rex

2.3.1.1. Arts. 8 y 25 CADH

(Q HO FDVR GH 0DULDQR 5H[HO (VWDGR KD UHVSHWDGR C
&\$'+ DPERV HQWHQGLGRV FRQMXQWDPHQDWRFRPRRHOODGUHHE
WiFLWDPHQWH FRPogXnGHERGRDDGTHX HV HO PHFDQLVPR S
HO UHVWR GH ''++ \ D VerqYnjes SXHXQDHOHUFDQ OD REOLJDF
ORV (VWDGRV \ FRQVWLWX\HQ XQLDFDQDGLDXFRVXQWGHG T
GHEHQ HVWDU SUHVHQWHV HQ XQ (' \ SRU HOOR UDWL
,QWHUDPHULFDQR \ HO 6LVWHPD 8QLYHUVDO GH ''++ FXPSO
TXH ODDVQRHnsVRQ GH REOLJDWRULR FXPSOLHQWR
5HVSHFWR DO FDVR GH 5H[VH DWLHQGH D GLFKR FXPS
GLVFLSOLQDULR TXH VH LQLFLD SRU OD &6- VH OH GD OD I
pVWH HVWLPA B B USVLDJROWH HGtDV GHUHFKR HMHUFLGR S
DFFHVR D XQHEXVVRH UFRQWLDHODDEHYR OXFLyQ GLVFLS
VX VXVSHQVlyQ DO KDEHU FRPHWLGR IDOWD JUDYH SRU
LQVWDQFLD (O SURSLR VHQWHQFLDGRU IXH TXLHQ QR TX
H[SOtFLWDPHQWH SRU HO RUGHQDPLHQWIDOMXDtGHFRRWHLYD

³² 48,63(5(0ĭ1) ,XV FRJHQV HQ HO 6LVWHPD ,QWHUDPHULFDQR 6
GH 'HUHFKR 1 ž %DUUDQTXLOOD SS ,661
&R,'+ E YRWR FRQFXUUHQWH UD]RQDGR GHO MXH] 6HUJLR *DUFtD
³³ 48,63(5(0ĭ1) ,XV FRJHQV HQ HO 6LVWHPD ,QWHUDPHULFDQR 6
GH 'HUHFKR 1 ž %DUUDQTXLOOD SS
2SLQLyQ &RQVXOWLYD 2& GH GH VHSWLHPEUH GH 6ROLFLWD
MXUtGLFD \ GHUHFKRV GH ORV PLJUDQWHV LQGRFXPHQWDGRV

FRQRFHGRUHV GHO 'HUHFKR GHO YLJHQWH HQ WRGR (VWD

0 0

3RU ~OWLPR GHEHPRV UHPDUFDU GH QXHYR TXH SDUD TXH
XQHVXOWDGR IDYRUDEOH D ODV SUHWHQVLRQHV GH TXLHQ
TXH XQ UHFXUVR LQWHUQR QR SURGX]FD XQ UHVXOWDGR ID
OD LQH[LVWHQFLD R HO DJRWVWDHQRWDGWHWRGRFOODR
DOHJDFLyQ SXHV FRPR D VX SDUHFHU QR LED D VHUOH C
LQWHUSRQHU HO UHFXUVR FXDQGR QR VyOR WHQtD HO UH
VLQR TXH SRQtD VHJXLGR GH HVH KDEHU LQWHUSXHVR
SSHODFLyQ

6REUH HVWH PLVPR DUWtFXOR OD &RPLVLyQ DOHJy TXH D
HQ ORV SDtVHV ODWLQRDPHULFDQRV GHEHQ FRQWDU FRQ
LPSDUFLDOLGDG

€@•0W t1H €@•@0&

€@T• €P @

)LQDOPHQWH FRPR \D VH KD PHQFLRQDGR DQWHULRUPHQW
DFFHGHU D ORMOPHFDQLVDRR HOTXHFRLURFVWLDGR(GVR)LVFD
HQ VX RUGHQDPLHQWR MXUtGLFR SDUD OD GHIHQVD GH VXR
UHTXLVLWRV HVWDEOHFLGRV HQ HO DUWtFXOR &\$'+ \ FR

2.3.2. Respecto a Magdalena Escobar

(Q HO FDVR GH 0DJGDOHQD (VFREDU QR VH HQWLHQGHQ SR
 \ &\$'+ 3XHVWR TXH VX FDUJR VH FRQLQXDUtD HQ
GLVS`@F O

WRPD

UHPDUFD TXH ORV SXHVWRV GH FDUiFWHU WHPSRUDO VH
SDUD HO (VWDGR HQ HO PRPHQWRRGHVSHUWHWDFUDXQ VDUYD
(VWDGR QR SXHGH TXHGDU YDFtD \ VLQ QDGLH HQ HO FDUJ
KRUD GH VDOYDJXDUGDU ORV GHUHFKRIV GH ORV FLXGDGDG
3RU ~OWLPR OD &R,'+ UHLWHUD TXH HO DUWtFXOR SURW
(V GHFLU HO DUWtFXOR GH OD &\$'+ SURKtEH OD GLVFUL
FXDQWR D ORV GHUHFKRIV FRQVODRUDGRWHQSGIEFKR DWVWGD
DSUXHEH HO (VWDGR \ D VX DSOLFDFLyQ (Q RWUDV SDO
SURWHFFLyQ GHVLJXDO GH OD OH\ LQWHUQD R VX DSOLFDF
DUWtF\$WRHQGLWQGRSDOHVEUDV D ODJGDQHQD (VFREDU HQ Q
GHVLJXDO QL FRPR FDUJR S~EOLFR QL FRPR SDUWH GH XQ
VH KD DSOLFDFGR OD &RQVWLWXFLyQ \ HO 'HFVHWHQFDVtGFR
pVWD \ HQ HO VHJXQGR FRQFHSWR WDPSRFR SXHVWR TXH
YXOQHUGR ORV GHUHFKRIV GH XQ WHUFHUR (Q HVWH FDUV
VH UHPDUFy TXH QR VH SRGtD GDU XQD UHVROXFLyQ GH IR

2.3.3.2 Art. 24 CADH

(O GHUHFKR D OD SURWHFFLyQ LJXDOLWDULD \ HIHFWLYD
FRQVDJUDGR HQ QXPHURVRV LQVWUXPHQWRV LQWHUQDFLR
MXULVSUXGHQFLD LQWHUQDFLRQDO SURYRFDQGR VX FUL
FRJHQVREUH HO FXDO GHVFDQVD HO DQGDPLDMH MXUtGLFR
FRQMXQWR GHO RUGHQDPLHQWR MXUtGLFR GHO (VWDGR GH
ODV FROGND SQFXUULU GH QR DWHQGHU D HVWD REOLJDF
LOHJtWLPDV RULJLQDQGR UHV(SVQRV TXHOLDG DIGU E PWHQD FV
DWHQFLyQ D OD UDWLILFDFLyQ GH)LVFDODLQDFLHQWR
ODV IRUPDV GH GLVFULPLQDFLyQ FRQWUD OD PXMHU \ D
VREUH OD GHIHQVD GH ORV ''++ FRPR ILQ VXSUHRP GHO (V
%DMR HVWD SUHPLVD VHUtd GHO WRGR FRQWUBSKRWRODR
SRVWXODQWHV SXHV HO FRQMXQWR GHO RUGHQDPLHQWR
WRUQR DO UHVSHWR GH HVWH GHUHFKR IXQGDPHQWDO (V
H[LJHQFLD GH RIUHFHU XQDLQXVROHQWR GHIUHFKRQV FRQV
DSOLFDFLyQ WRGD YH] TXH QR VH OH LPSLGH D ODV SRVW
ORV VXSXHVWRV GHUHFKRIVXOQHUGRIV QL VH HVWDEOH

1R VH GHEH FRQIXQGLU OD SURGXFFLyQ GH HIHFWRV IDYRU
GH XQD UHVROXFHyQ GEMREREDHOFDRQJXDOGDG GH WUDWR
SRVWHULRUPHQWH DGHPiV GH QR VHU HVWR HO SXQWR GH
GH GHUHFKRv SRU SDDWHHGFVWYLD&D6 HV IUXWR DGHPiV GH
GH VXV REOLJDFLRQHV \ OD FRUUHFWD FRQILJXUDFLyQ GH
TXH VH KDFH GH ORV PLVPRV SRU SDUWH GH TXLHQ DFXGH

1R SXHGH FRQVLGHUDUVH SRU VX SDUWH TXH HHSURFIDVR
ODV IXQFLRQHV S~EOLFDV HQ FRQGLFLRQHV GH LJXDOGDG
tQWLDPHQWH UHODFLRQDGR FRQ HO DUW SXHV QR VH S
OD DSWLWXG OD UD]yQ GH JpQHUR SHUDWRHTQFLD]DUYDQGG
FRQWUDULR FRPR KHPRV SRGLGR FRPSUREDU DO FRQMXQW
HQ ODV GLVWLQWDV IDVHV GHO SURFHVR VHOHFWLYR VH
FRQGLFLRQHV JHQHUDOHV GH LJXDOGDG TXH OH VRQ H[LJL
IRUPDQ GH PDQHUD UD]RQDEOH \ REMHWLYD HQFRQWUDQG
TXH JDUDQWL]D FRQ WRGR OD SURWHFFLyQ HIHFWLYD VXI
'RPLQJR 0DUWLQH] IUHQWH D 0 +LQRM]D \ 6 GHO 0DVWUR
SXHVWR TXH OR TXH VH JDUDQWL]DQ VRQ ODV FRQGLFLRQ
GHFLVLYQ TXH GHSHQG XQD YH] VXSHUDGRV ORV FULWHUL
-3 \ SRVWHULRUPHQWH GHO SUHVLGHQWH 2EUHJyQ TXLHQ
REWHQLGRV SRU ORV SRVWXODQWHV EDMR XQ FULWHULR P

⁷⁹ 2S FLW QRWD SiUUDIR

⁸⁰ +& \ 35\$

⁸¹ &R,'+ &DVR 5HYHUyQ 7UXMLOOR 9V 9HQH]XHOD ([FHSFLyQ 3UHOLPLQ
GH GH MXQLR GH 6HULH & 1R 3iUUDIR

HQ FRQIRUPLGDGWRRIQQO@DG/HMS@HV-XQWDV GH 3RVWXODFLY
GLVSRQH HO SUHVLGHQWH

E D = Ñ3 PUEFWXV @DUWH SDUHFHUtD SRFR FRQJUXHQWH SHQVDU T

FDOLILFDFLyQ GH SXQWRV HQ QDHSUXXIE DIXGHUFR QRFOE
GHFLGLHURQ DFXGLU D OD YtD GH DPSDUR \ QR DO 3URF

3RU RWUR ODGR WDPSRFR VH YHUtD FXHVWLRQDGD OD SR
-3 SXHV DXQTXH HO QRPEUDPLHQWR GH VXV LQWHJUDQWHV
VXMHW R D OR GLVSXHVWR HQ ORV DUWtFXORV D GH OD
GH OtPLWH \ FRQWURO DO GHWHUPLQDU HQWUH TXp WLS
QRPEUDPLHQWR HV DGHPiV TXHGDQ VXMHW R D ORV GLIHU
GH HVWD PLVPD OH\ WUDQVSDUHQFLD PpULWR PRUDOL
FLXGDGDQD GLULJLHQGR DVt VX IXQFLRQDPLHQWR HQ OD
VHOHFFLyQ VLHQGR SULQFLSLRV SURSLRV DOHQHEEGRVDF
FXDOTXLHU yUJDQR \D SHUWHQH]FD DO 3RGHU MXGLFLDO
RWURV TXH HMHUFLHQGR IXQFLRQH V MXULVGLFFLRQDOHV
D ORV GHUHFKR V IXQGDPHQWBOHWWHODVBRHWDRQRFR FR
FRQWURYHUVLD OD SUHVHQFLD GH HQWUHYLVWDV TXH SUH
UHDO

TXGDQGR WLSLILFDGR HQ OD OHJLVODFLyQ FERERHQIGOLDVFXG
