

Caso Maricruz Hinojoza y otras vs. la República de Fiscalandia

Representantes del Estado de Fiscalandia.

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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 GHQ 6LJOR ;9,, &HQVURHGH
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 \ &RVWDV 6HQWHQFLD GH GH &GHR M Si

" &R,'+ &DVR 7LEL 9V (FXDGRU ([FHSFLRQHV 3UHOLPLQ
6HQWHQFLD GH GH VHSWLHPEUH GH 6HULH & 1R

" &R,'+ &DVR GHO 7ULEXQDO &RQVWLWXFLRQDO 9V 3H
6HQWHQFLD GH GH HQRUR GH 6HULH & 1R SiJ

" &R,'+ &DVR 9HOiVTXH] 5RGUtJXH] 9V +RQGxUDV)RQGR
6HULH & 1R SiJV \

" &R,'+ &DVR <DWDPD 9V 1LFDUDJXD ([FHSFLRQHV 3UH
&RVWDV 6HQWHQFLD GH GH MXQLR GH 6HULH &

II.

” Manual de Derecho Europeo Relativo al Acceso a la Justicia, 8 Q L y Q (X U R S H D
\$ J H Q F L D G H O R V ' H U H F K R V) X Q G D P H Q W D O H V G H O D 8 Q L
3 i J , 6 % 1

” Criterios de Verificación del Estado de Derecho 8 Q L y Q (X U R S H D & R P
(X U R S H D S D U D O D ' H P R F U D F L D S R U H O ' H U H F K R & R P L V
3 i J

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 , @ĐUHpQh JWP @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 \ HQUHYLVWDV VH GHOLEHUy TXH C
FRQIRUPDGD SRU 'RPLQJR ODUWtQH] \ ~~FRQVJGR EDQGLQ~~
)* GH OD 5) PLVPR TXH HUD HO HQWRQFHV -HIH GHO iUJDC
TXLHQ DGHPiV REWXYR UHVXOWDGRV FRQVLGHUDEOHPHQW
\ HYDOXDFLyQ GH DQWHFHGHQWHV ~~FRQVJGR EDQGLQ~~ HO DFFHV
FRPR)* HQWH DXWyQRPR GHO 3RGHU &RQWUDORU
\$KRUD ELHQ WRPDQGR HQ FXHQWD DO 3RGHU -XGLFLDO GH
WRPDGR OD GHFLVLyQ GH GHVWLGLV ~~FRQVJGR EDQGLQ~~
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 1HROUENWDOQWDF
WDPELpQ H[LVWH OD SRVLELOLGDG GH DFXGLU DO UHFXUV
WRGD DFFLyQ X RPLVLyQ SRU SDUWH GH FXDOTXLHU IXQF
YLROH ORV ''++ \ OLEHUWDGHV IXQGDPSEXWDFRHTXHHFRQRI
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 DUJXR
SUHVHQWDURQ UHFXUVR GH DSHODFLyQ DQWH OD 6HJXQGD
H[WUDRUGLQDULR DQWH OD &6- VLHQGR HQ DPEDV VLW
DUJXPHQWRV TXH OD UHVROXFLyQ TXH UH(FKSRUHQVWR LSQL

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 FRQMXQ³²WDPHODW&RFRHODGUHHE
WiFLWDPHQWH FRPogXnGHERGRDDGTHX HV HO PHFDQLVPR S
HO UHVWR GH ''++ \ D VerxYnjes SXHXQDHQRHUPDDQ OD REOLJDF
ORV (VWDGRV \ FRQVWLWX\HQ XQLDFDQDGLDXFRVXKQWGHG 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 XQHEXVXVRH 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
MXUtGLFD VH GD \ FRQ HOOD ODV JDUDQWtDV GHO DUWtFXC
3RU RWUR ODGR FDEH UHFDOFDU TXH HO SURSLR MXH] HV V
OD IDOWD GH PRWLYDFLyQ YXOQHuD JUDYH] PHVQWHVXOXGHW
GHUHFKR GHO SUHVWLYDFLyQ YXOQHuD MXVWLILFDLyQ UD
XQD FRQFOXVLYQ' (O GHEHU GH PRWLYDU ODV UHVROXFLR
DGPLQLVWUDFLyQ GH MXVWLFLD TXH SURWHJH HO GHUHFK
TXH HO 'HUHFKR HVWDEOHFH \ RWRUJD FUHGLELOLGDG G
VRFLHGDG GHPRFUiWLFD 3RU HOOR ODV GHFLVLRQH V TXH
'++ GHEHQ HVWDU GHELGDPHQWH IXQGDPHQWDGDV SXH
DUELVWD PLVPD &6- DOHJy TXH VdqFLRQy DO -XH] GLVFL
VHxDODQGR TXH DO YXOQHUDU HVWD REOLJDFLyQ GH PRW
VH HVWDED YXOQHUDQGR HO GHUHFKR SRORVXFRyD VDUJD
PRWLYDQGR TXH 5H[QR DSOLFy MXD WpFLDFD QGH DS RQG FIDG
HVWDWDO (O MXH] VyOR VHxDOy TXH OD OLPLWDFLyQ HUD
PRPHQWR WXYR HQ FXHQWD TXH OD /H\ HUD SUHFRQVWLWXF
HQ \ TXH HO FDQGLGDWR HUD MRyHQ \ SRVHtD SDUD Vt
WDQWR QR VH GD HQ QLQJ~Q PRPHQWR OD YXOQHUDFLyQ
SRUHSUW)LVFDODQGLD VLPsoHPHQWH D XQD IDOWD JUDYH

³⁷ &R,'+ &DVR /ySHgVHGH]X HOD)RQGR 5HSDUDFLRQH V \ &RVWDV 6H
6HULH & 1R 3iUUDIR

³⁸ 35\$

³⁹ +&

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 DJRWVWDFQRWDGWHWRGRFOODR
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 ORMQPHVDQLVDRR 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

PRPHQWR VH QHFHVLWDEDQ DO IUHQWH GHO VHUYLFLR S-
)LVFDODQGLD \$VLPLVPR OD &R,'+ VHxDOB ~~TXHGHQHQFLKQJ~~
LJXDOGDG SRUTXH DO VXIULU pVWD OD GHVWLWXFLyQ \D W
LJXDOGDG

\$GHPiV QR VH SXHGH DSUHFLDU YLRODFLyQ GHO GHELGR
VHQWHQFLD VREUH ~~H'Q eLlB Fd DmngH MxngL dDg~~ Fiscal General

había generado una situación de hecho imposible de revertir mediante el presente proceso, pues
ello podría afectar derechos de terceros que no han tenido la oportunidad de ejercer su derecho
a defensa⁵⁶, GH OR TXH SRGHPRV LQWXLU TXH ODV JDUDQWtDV S

VH VXVFLWDED HQ TXH OD RWUD SDUWH LPSOLFDGD HQ HO
YHU JUDYHPHQWH DIHFWDGRV VXV ''++QD DWHQGQU D OD

6H GHEH UHPDUFDU GH QXHyr HO FRPSURPLVR GH)LVFDOD
&R,'+ OR UHFRQRFH WIFLWDPHQWH ~~H'V dgeHsG HUVFRK R HFRPURX~~

REOLJDFLyQ MXUtGLFD SDUD ORV (VWDGRV \ FRQVWLWX\HQ
(O (VWDGR GHEH UHVSHWDU ³HO FRQMxQWR GH UHTXLVL

SURFHVDQHV' D HIHWR GH TXH ODV SHUVRQDV SXHGDQ GH
DFWR HPDQDGR GHO (VWDGR TXH SXHGD DIHFWDU VXV GH

SURFHVDQHV TXH VH PDUFDQ HQ HVWH DUWtFXOR \D KDQ V
RtGR GHIHQGHU VXV GHUHFKRV DQWH HO yUJDQR FRPSHW

ODJGDOHQD SUHVHQWD OD GHPDQGD SDUD HO 3URFHVR GH

⁵⁵ 2S FLW QRWD 3iUUDIR

⁵⁶ + &

⁵⁷ EGHP FLWD

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(SRQRV TXH HODG DIGU E RWHQD FV
DWHQFLyQ D OD UDWLILFDFLyQ GH)LVFDODLQDFLHQWR
ODV IRUPDV GH GLVFULPLQDFLyQ FRQWUD OD PXMHU \ D
VREUH OD GHIHQVD GH ORV ''++ FRPR ILQ VXSUHPR 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 GHUHFKRV YXOQHUGRV 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 SDDWHHGFVLYD&D'G 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 DIXGHURFR QHFL
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 SHUWHQHJFD DO 3RGHU MXGLFLDO
RWURV TXH HMHUFLHQGR IXQFLRQH V MXULVGLFFLRQDOHV
D ORV GHUHFKR V IXQGDPHQWBOHWWHODVBRHURFRFR
FRQWURYHUVLD OD SUHVHQFLD GH HQWUHYLVWDV TXH SUH
UHDO

TXGDQGR WLSLILFDGR HQ OD OHJLVODFLyQ FERERHQIGOLDVFXG
