

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 <sup>3</sup>/D 3DQHO %ODQFD' 3DQLDJXD 0RUDO  
6HQWHQFLD GH GH PDUJR GH 6HULH & 1R SiJ

" &R,'+ &DVR 5HYHUyQ 7UXMLOOR 9V 9HQH]XHOD (  
5HSDUDFLRQHV \ &RVWDXQLR 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 DOWMxSRHVLGHQ  
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 \ HQUHYLVWDV VH GHOLEHUy TXH C  
FRQIRUPDGD SRU 'RPLQJR ODUWtQH] \ ~~FRQVJGR EDQGLQ~~  
)\* GH OD 5) PLVPR TXH HUD HO HQWRQFHV -HIH GHO iUDC  
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

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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,

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

RS

WR @HH0`€ 0cSH

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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(FKSRUHQVWR LSQL

UHP P

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## 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 FRQMXQWDPHQD&RFRPRHODGUHHE  
WiFLWDPHQWH FRPogXqGHERGRDDGTHX HV HO PHFDQLVPR S  
HO UHVWR GH ''++ \ D Vexa Vnjes SXHXQDHOHUFDQ OD REOLJDF  
ORV (VWDGRV \ FRQVWLWX\HQ XQLDFDQDGLDXFRVXQWQDGT  
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 HMFUFLGR 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

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<sup>32</sup> 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  
<sup>33</sup> 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 \ GHUHFKR 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 YXOQH UD JUDYH PHVQMHVXOXGHW  
GHUHFKR GHO SUHVWLYDFLyQ YXOQH UD HOOD MXVWLILFD LyQ UD  
XQD FRQFOXV LyQ' (O GHEHU GH PRWLYDU ODV UHVROXFLR  
DGPLQLVWUD LyQ GH MXVWLFLD TXH SURWHJH HO GHUHFK  
TXH HO 'HUHFKR HVWDEOHFH \ RWRUJD FUHGLELOLGDG G  
VRFLHGDG GHPRFUiWLFD 3RU HOOR ODV GHFLVLRQHV TXH  
'++ GHEHQ HVWDU GHELGDPHQWH IXQGDPHQWDGDV SXH  
DUELVWD PLVPD &6- DOHJy TXH VDQFLRQy DO -XH] GLVFL  
VHxDODQGR TXH DO YXOQH UD HVWD REOLJDFLyQ GH PRW  
VH HVWDED YXOQH UDQGR HO GHUHFKR SRORVXFRyD VOUJD  
PRWLYDQGR TXH 5H[ QR DSOLFy MXUWpFLDFD QGHDSRQGFDGD  
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 YXOQH UD LyQ  
SRUHSUW)LVFDODQGLD VLPsoHPHQWH D XQD IDOWD JUDYH

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<sup>37</sup> &R,'+ &DVR /ySHgVHGHDXHOD )RQGR 5HSDUDFLRQH V \ &RVWDV 6H  
6HULH & 1R 3iUUDIR  
<sup>38</sup> 35\$  
<sup>39</sup> +&







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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 @

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)LQDOPHQWH FRPR \D VH KD PHQFLRQDGR DQWHULRUPHQW  
DFFHGHU D ORMQPHVDQLVDRR HOTXHFRLURFVWLDGR(GVR)LVFD  
HQ VX RUGHQDPLHQWR MXUtGLFR SDUD OD GHIHQVD GH VXV  
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

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WRPD

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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

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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 DQGDPDMH MXUtGLFR  
FRQMXQWR GHO RUGHQDPLHQWR MXUtGLFR GHO (VWDGR GH  
ODV ~~FRQD~~ SQFXUULU GH QR DWHQGHU D HVWD REOLJDF  
LOHJtWLPDV RULJLQDQGR UHV(SVQRV TXHGLD D IGU 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 XQDQXVROHQWR GHIHFKRV FRQV  
DSOLFDFLyQ WRGD YH] TXH QR VH OH LPSLGH D ODV SRVW  
ORV VXSXHVWRV GHUHFKRV YXOQHUGRV QL VH HVWDEOH

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1R VH GHEH FRQIXQGLU OD SURGXFFLyQ GH HIHFWRV IDYRU  
GH XQD UHVROXFHyQ GEMREREDHCFRQJXDOGDG GH WUDWR D  
SRVWHULRUPHQWH DGHPiV GH QR VHU HVWR HO SXQWR GH  
GH GHUHFKRv SRU SDDWHHGFVLYD&D6 HV IUXWR DGHPiV GH  
GH VXV REOLJDFLRQHV \ OD FRUHFWD 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

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<sup>79</sup> 2S FLW QRWD SiUUDIR

<sup>80</sup> +& \ 35\$

<sup>81</sup> &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

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

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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 IXQGDPHQWBOHWWHODVBRHWDRFR FR  
FRQWURYHUVLD OD SUHVHQFLD GH HQWUHYLVWDV TXH SUH  
UHDO

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TXGDQGR WLSLILFDGR HQ OD OHJLVODFLyQ FERERHQIGOLDVFXG

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