



## **Derechos fundamentales frente a la persecución penal sin límites**

El 22 de julio de 2021 ocurrieron actos por parte del aparato de Estado que ubicaron a El Salvador en el contexto de las décadas 70-80 del siglo pasado, época durante la cual el respeto a los Derechos Civiles era mucho menos que una aspiración.

El respeto irrestricto de los derechos fundamentales, que se resume en el carácter prioritario del principio del Estado Constitucional de Derecho, es un límite infranqueable para la realización del derecho penal y su pretensión de poner orden en la sociedad democrática, mediante el dictado de normas jurídicas, la aplicación del debido proceso y la sanción impuesta por jueces íntegros e independientes, frente a toda infracción que cometa cualquier persona.

El respeto de los principios que protegen al inocente, debe estar por sobre la aplicación del derecho penal a cualquier imputado, dado que sólo al final del camino del proceso, con la sentencia definitiva firme, el inocente se puede convertir eventualmente en culpable. La exigencia del respeto al principio de inocencia ha sido una lucha histórica de FESPAD independientemente de quiénes sean los imputados.

Para atajar los abusos que tendenciosamente puedan producirse en esta actividad de aplicación del derecho penal, debe prevalecer la protección de todas las personas, ya que el derecho penal debe ser garantía de protección de las circunstancias básicas de la convivencia democrática en sociedad; de tal manera que cuando cualquier persona se ve enfrentada a la sospecha de haber cometido un delito y a la posibilidad de ser penada por ello, debe prevalecer el respeto a sus derechos fundamentales que relegan al segundo plano las exigencias del castigo anticipado y arbitrario; esto es así debido a los principios de presunción de inocencia, in dubio pro reo, carga de la prueba al acusador, la protección internacional de los derechos fundamentales, entre otros.

Los actos ocurridos ayer en la detención de ex funcionarios de gobierno se dieron mediante abuso de poder y con claros signos de arbitrariedad; donde, por lo menos, se les violentó: el debido proceso, la presunción de inocencia, el derecho a un abogado, proporcionalidad y respeto a la dignidad humana; que son aspectos que deben observarse desde el inicio del procedimiento.

Inobservar su aplicación puede llevar a El Salvador a caer en la utilización de un derecho penal anormal, de justicia selectiva que niegue la plena igualdad ante la ley y el respeto a los derechos fundamentales que deben ser su límite.

San Salvador, 23 de julio de 2021

# Tensiones Derechos Fundamentales O Persecucion Sin Limites

**Didier Musso**



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