

**2021 SUMMIT OF THE AMERICAS
INTER-AMERICAN HUMAN RIGHTS
MOOT COURT COMPETITION 2021**

ELENA MARIA BELAFONTE

(Petitioner)

V

THE COMMONWEALTH OF SAN SEBASTIÁN

(Respondent)

MEMORIAL FOR THE PETITIONER

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STATEMENT OF THE FACTS

Factual Background

The Commonwealth of San Sebastián is an independent commonwealth located in the Eastern Caribbean region of the Americas with a population of 3.5 million. The Commonwealth of San Sebastián is a member of the Organizations of American States, United Nations, Organisation of Caribbean States, the Regional Security System, CARICOM and CARICOM Regional Task Force on Crime and Security. Due to its secure position and alliances, the country does not require a high percentage of military spending, and is able to allocate a considerable portion of its funds to infrastructure and education.¹

San Sebastián's Spanish heritage has created a unique relationship between church and state. The island is overwhelmingly Roman Catholic (over 98 percent of the population) and maintains extremely close ties to the Vatican. Though the government is constitutional and secular by law the country's policies tend more towards conservative policy. Since its independence in 1965, San Sebastián has never elected a president, regional governor, or significant mayor who was not a member of the Catholic Church.²

The education system of San Sebastián is well supported financially and is considered highly successful by the standards of the region. Literacy rates in the urban areas are well over 97 percent. In the rural regions of the island, literacy and primary/secondary education attendance has lagged behind the urban areas, but still ranks well above the world and the hemispheric average. In 2019 San Sebastián spent approximately \$11,000 per full time

¹ Hypothetical Par. 4

² Hypothetical Par 5

equivalent on elementary and secondary education, around 10 percent higher than the global spending average.³

The Global Economic recession of 2008 was particularly difficult for San Sebastián, resulting in tax revenue decreases of over 30 percent compared to 2007. Consequently money budgeted for education expenditures decreased by at least 25 percent nationally, leaving many schools with budget shortfalls. In response, the government officially partnered with the Vatican to begin a new educational support program known as the “Teach Them Together Initiative”.⁴ As a part of this agreement, the parishes in San Sebastián were allowed to donate up to 50 percent of the total general operating budget of all schools within its jurisdiction. In return, the participating dioceses receive discounts on their property taxes. The state retains ownership and full discretionary power in running the school, including managing the staff, testing curriculum, and enforcement of rules and procedures. The parish has the power to earmark funds for specific activities or budget line items.⁵ During Covid in 2020, school expenses decreased by roughly 10-15 percent.⁶

The victim, Elena Maria Belafonte, is a 53 year old secondary school teacher from Maldoba Municipality. She worked as a primary school teacher for 16 years. In 2009, she was offered and accepted a position as a math teacher for the largest secondary school in the municipality.⁷ During her 27 years of teaching, Miss Belafonte had no disciplinary actions taken against her, no complaints filed against her, and won eight “Teacher of the Year” awards⁸.

³ Hypothetical Par. 6

⁴ Hypothetical Par. 8

⁵ Ibid.

⁶ Clarification Question 58

⁷ Hypothetical Par. 12

⁸ Ibid. 1998, 2001, 2004, 2005, 2010, 2012, 2014, 2018

Over the course of the pandemic, WhatsApp became a preferred mode of communication between students and teachers, and, while this was known by the school administration, it was not monitored in any professional capacities.⁹ On May 7, 2020, during the mandatory quarantine, Miss Belafonte posted a series of videos greeting her students, one of which was musical. She sang a song for her students, accompanied by Ruby Olivera, a 39 year old musician who she introduced several times as her “partner” and “special friend”.¹⁰

Following the videos released on WhatsApp, the community began to gossip about Miss Belafonte and Miss Olivera’s relationship. Eventually, the video was brought to the attention of the parish priest, Father Josue Maldonado, who requested a meeting with the women. The two women accepted and during the conversation, Father Maldonado learned that the women were in a lesbian relationship.¹¹ Citing outcry from his community, Father Maldonado met with the headmaster of the secondary school and the municipal school system’s superintendent. He requested that Miss Belafonte be quietly reassigned to a non-teaching or student contact position, officially stating that the reason was that the parish church was uncomfortable with the employment of someone who behaved so unprofessionally and irresponsibly.¹² It was never stated whether the issue was with the relationship itself or the publicizing of said relationship on social media. Initially the headmaster refused to do anything because of Miss Belafonte’s spotless record, however after many more conversations and increased pressure from higher church officials, he relented.¹³ Despite it being the Parish’s initial request, Miss Belafonte was never offered another position in any official capacity.¹⁴ Miss Belafonte held her position until

⁹ Clarification Question 20

¹⁰ Hypothetical Par. 14

¹¹ Ibid.

¹² Hypothetical Par. 15

¹³ Ibid.

¹⁴ Clarification Question 50

November 1, 2020, when she was terminated by the headmaster for “conduct unbecoming of an educator”.¹⁵ For that reason she was also declared ineligible for her pension.¹⁶

1. Admissibility

1.1 Statement of Jurisdiction

The Commonwealth of San Sebastián became a founding member of the OAS as part of Cuba in 1948. Following its independence in 1965, San Sebastian reapplied for OAS membership under the requirements of Article III of the OAS Charter and ratified all fundamental documents required to achieve member state status.¹⁷ It has recognized the jurisdiction of the Inter-American Court of Human Rights since 1982.¹⁸

1.2 Exhaustion of Domestic Remedies

Elena Maria Belafonte filed a civil case against the municipal school administration on January 3 2021. The court dismissed the case on January 17, 2021.¹⁹ After that, the case was brought before the Appellate Court of Córdoba Department, where the court upheld the lower court’s ruling on February 24, 2021.²⁰ The third and final appeal was to the Supreme Court of San Sebastián which once again upheld the original ruling on April 5, 2021.²¹ On May 10, 2021 Miss Belafonte filed an individual petition before the Inter American Commission on Human Rights under the violations of Articles 1.1, 11.2, 12.3, and 13.3.²² Only Articles 1.1, 11.2, and 12.3 were found in favor of by a majority.²³

¹⁵ Hypothetical Par. 12, 15

¹⁶ Hypothetical Par. 15

¹⁷ Hypothetical Par. 30

¹⁸ Hypothetical Par. 31

¹⁹ Hypothetical Par 16

²⁰ Hypothetical Par. 17

²¹ Hypothetical Par 18

²² Hypothetical Par. 19

²³ Hypothetical Par. 22

2.VIOLATIONS

2.1 American Convention on Human Rights

Conforming to the Inter-American Commission's findings for the Commonwealth of San Sebastián, the Petitioner asserts the violations of the American Convention on Human Rights, Articles 1, 11, and 12, and consequently requests that the Court order the State to perform *restitutio in integrum*, in line with this convention.

3.ARGUMENTS ON THE MERITS

3.1 Article 1. Obligation to Respect Rights

The American Convention on Human Rights asserts that all citizens of member states maintain “... the free and full exercise of those rights [mentioned within these documents] and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.”²⁴

Miss Elena Maria Belafonte was a well decorated teacher and well respected and appreciated by her superiors.²⁵ According to the Universal Declaration of Human Rights, another document that San Sebastián has signed onto, the rights given by the document are “...the inalien- able entitlements of all people, at all times, and in all places — people of every colour, from every race and ethnic group; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their caste, their creed, their age or sexual orientation.”²⁶ This statement is defining the social conditions which are *not* subject to discrimination against. From this document, it can be understood that sexuality is a social condition which is not to be

²⁴ American Convention on Human Rights Article 1.1

²⁵ Hypothetical Par. 12, 15

²⁶ Universal Declaration of Human Rights

discriminated against as according to both the Universal Declaration on Human Rights and the American Convention on Human Rights.

The Commonwealth of San Sebastián has an incredibly high percentage of its population which identifies as Roman Catholic.²⁷ Due to this information, the current make-up of the legislature is nearly 100 percent Roman Catholic, as well as every other higher office holder.²⁸ So while, technically, the government is secular by law, the Catholic Church has great weight in their politics.²⁹ While Miss Belafonte does claim to be a member of the Roman Catholic Church, she also identifies as a lesbian individual which is how the issue came about.³⁰ Due to the state's reliance on the Church, it put Miss Belafonte in a compromising position. The Roman Catholic Church has a history of disapproval towards same sex couples. Therefore, since Miss Belafonte's trial had complete reliance on a court of Roman Catholic judges, it can be expected that there was bias during the trial.

In past cases, the court has found in favor of the petitioner on the grounds that, “no rule, decision or practice of law internally, either by state authorities or by private individuals, may diminish or restrict, in any way, the rights of a person based on their sexual orientation.”³¹ In this case, *Duque v Columbia*, Columbia was asked to pay Mr. Duque \$10,000 in pecuniary damages and give him the survivor pension with interest in relation to when they first denied him of the pay.³²

²⁷ Hypothetical Par. 5; >97 percent

²⁸ Clarification Question 34

²⁹ Hypothetical Par. 5

³⁰ Clarification Questions 7, 30

³¹ *Case of Duque v. Columbia* [1/A Ct. H.R.] 2017

³² *Ibid.*

3.2 Article 11. Right to Privacy

Article 11.2 of the American Convention on Human Rights states that “[n]o one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.”³³

Miss Elena Maria Belafonte had a very good reputation. She had no complaints or issues against her for the duration of her career and won several awards.³⁴ As a matter of fact, she was so good at her job that, even when approached by the body responsible for nearly half of the school’s funding, the headmaster did not want to consider removing Miss Belafonte from her teaching position.³⁵ This initial response proves that the issue was not the actions that Miss Belafonte took but the threats of action from the church. This makes the ultimate argument of the State, in court, invalid. The original defense of the State is that the issue is not the lesbian relationship itself, but the publicized state of the relationship via Social Media.³⁶ This argument is wholly untrue seeing as, if that were really the case, she should have been fired on discovery of her so-called “publicizing of the relationship.”³⁷

The rights violated in Article 11.2 extends not only to the firing itself, but also the state of the firing. Miss Belafonte was fired for “conduct unbecoming of an educator.”³⁸ In previous instances of firings for this reason, the causes were far more extreme. One instance was for a teacher who had a sexual relationship with a minor student.³⁹ Miss Belafonte’s situation is significantly less extreme than this. She did not engage in pedophilia, or any inappropriate actions with a student. The issue of relationship is with another grown, consenting adult. The two

³³ American Convention on Human Rights Article 11.2

³⁴ Hypothetical Par. 12

³⁵ Hypothetical Par. 15

³⁶ Hypothetical Par. 16

³⁷ Ibid.

³⁸ Ibid.

³⁹ Clarification Question 38

women are adults who both willingly partook in musical videos to release to Miss Belafonte's class the discussion with the Parish Priest.⁴⁰ The priest had requested Miss Belafonte's removal from her current student contact position.⁴¹ Another instance provided was a teacher who had been found in pornographic videos online.⁴² Once again, this instance is nothing akin Miss Belafonte's case. It has been confirmed that the videos released to her students via WhatsApp were not crude or pornographic in any way and were totally "G" rated."⁴³ The issue of this case, specifically referring to Article 11.2 in relation to Article 1.1, is that Miss Belafonte's release was stated to be of a nature similar enough to be categorized with them despite the fact that the videos were simply music videos, never explicitly relating to anything romantic or other outside that fact. The Petitioner holds that Miss Belafonte has done nothing wrong in releasing her videos to the students as none of them are of a vulgar or crude nature and are not official school posts. The statement that her release was for "conduct unbecoming of an educator" when the videos she released were never meant to do anything but entertain the students with something she enjoyed and connect with her students since they would not be able to meet in person and develop a connection.

In cases prior, the state has been found in violation of Article 11.2 in relation to Article 1.1 because, "public authorities or other third parties cannot abusively or arbitrarily intrude on an individual's privacy."⁴⁴ In this particular case, *Atala Riffo and Daughters v Chile*, the Court ruled that Miss Atala Riffo's sexuality is a part of her private life and therefore a right that is protected in the American Convention on Human Rights.⁴⁵ The same goes for the current case of *Elena*

⁴⁰ Ibid

⁴¹ Hypothetical Par. 15

⁴² Clarification Question 38

⁴³ Clarification Question 53

⁴⁴ *Atala Riffo and Daughters v Chile* [I/A Ct. H.R.] 2012

⁴⁵ Ibid.

Maria Belafonte v The Commonwealth of San Sebastián. Miss Belafonte, nor her partner, Miss Olivera, have confirmed, denied, or outright stated that they are in a committed relationship. It is simply common knowledge.⁴⁶ Even within the conversation with Father Maldonado, it is unknown whether their relationship was explicitly asked about and stated, or simply assumed based on how the women acted in front of one another. It is assumed that it was the former, but without an actual record of what was discussed, one cannot be certain.⁴⁷ Miss Belafonte's privacy was violated when it was recognized as reason she may or may not be fit for the job. She was let go of her job as an educator, not for being bad at the job itself or for doing something that was vulgar or volatile to the students, but for being in a non-heteronormative relationship that was never explicitly revealed to the public.

3.3 Article 12. Freedom to Conscience and Religion

The Freedom to Conscience and Religion as stated by Article 12.3 of the American Convention on Human Rights claims "Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others."⁴⁸

Freedom of Religion should not be an issue in the Commonwealth of San Sebastián. Government is secular by law.⁴⁹ However, that does not change the fact that the government could be biased in favor of one specific religious group. In this case, that group would be the Roman Catholics as they make up an overwhelming majority of the population of San Sebastian.⁵⁰ Generally, preceding the current Pope, LGBTQIA+ persons were looked down upon

⁴⁶ Clarification Question 52

⁴⁷ Clarification Question 53

⁴⁸ American Convention on Human Rights Article 12.3

⁴⁹ Hypothetical Par. 5

⁵⁰ Ibid. 98 percent of the population

and Maldoba has proven to be no different. The parish priest, after discovering Miss Elena Maria Belafonte's sexuality, voiced his displeasure with the school and asked for her to be moved to a different position.⁵¹ While that was the initial request of the church, it is unknown how the discussions between the church and the school proceeded, and as a final result Miss Belafonte was released having never been given the option of reassignment.⁵² All of this was in direct correlation to the revelation of her sexual orientation. There is a law in place that was meant to protect Miss Belafonte's rights: the Equal Opportunities in Service Act.⁵³ This act was meant to prevent discrimination against individuals of varying social conditions. This law is what should have kept the church from playing a decisive role in the firing of Miss Belafonte. This law failed to be upheld and therefore failed to protect the "rights or freedoms"⁵⁴ of Miss Belafonte against the Church. The state has already taken a moral stance on the issue in law - the Equal Opportunities in Service Act. Therefore, by firing Miss Belafonte for not hiding that she does not fit the heteronormative standards the church wants her to, they have gone against the decision they previously made on issues related to Article 12.3. Therefore this case is in violation of Article 12.3 of the American Convention on Human Rights in relation to Article 1.1.

There has only been one other case available in violation of Article 12.3 in the American Convention on Human Rights.⁵⁵ The case of *Plan de Sánchez Massacre v. Guatemala* [2004] is about the discrimination against individuals that led to and followed the massacre of 268 indigenous Mayan people. "The State's violations of the American Convention on Human Rights include the denial of justice and other acts of intimidation and discrimination to the

⁵¹ Hypothetical Par. 15

⁵² Clarification Questions 40, 50

⁵³ Hypothetical Par. 9 (2009)

⁵⁴ American Convention on Human Rights Article 12.3

⁵⁵ *Plan de Sánchez Massacre v. Guatemala* [2004]

detriment of the survivors and the next of kin of the victims of the massacre.”⁵⁶ While it is clear that this situation is far more severe than Miss Belafonte’s situation, there are similarities between the two cases. Specifically the “The state’s violations of the American Convention on Human Rights include ... discrimination ...”⁵⁷ since the state did violate Miss Belafonte’s rights on the grounds that she is a lesbian and that she believed that she would not be discriminated against for that since it is against the law.⁵⁸ Since the attack on the Mayan people was an act of genocide and the American Convention on Human Rights does not address genocide, the Courts found that they could not address that particular issue. However, the Court found in favor of the petitioner and the State accepted the facts and acknowledged international responsibility, which allowed the Court to review the genocidal patterns of the state when determining reparations.⁵⁹ The Court found the State in violation of several Articles including article 12.3.⁶⁰ As the Court should find the State in Miss Belafonte’s case as well, they have no issue of dealing with genocide, just the State failing to uphold their own laws that predetermined their moral stance on this case.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Hypothetical Par. 9; Equal Opportunities in Service Act

⁵⁹ *Plan de Sánchez Massacre v. Guatemala* [2004]

⁶⁰ Ibid.

Request for Relief

For the foregoing reasons, the petitioner respectfully asks that the court:

1. Find the Commonwealth of San Sebastián in violation of Articles 1, 11, and 12 of the American Convention on Human Rights
2. Pay Miss Elena Maria Belafonte \$300,000 for recovery of her salary and compensation for her pension projected over the next eight years.⁶¹ This amount is totaled to \$450,000.

Or

3. Require the Commonwealth of San Sebastián to pay Miss Elena Maria Belafonte the amount proportional to the amount she lost during her period of unemployment as well as reinstate Miss Elena Maria Belafonte in her previous position with a salary equal to her previous pay and confirm her as eligible for pension.

⁶¹ Hypothetical Par. 16; \$25,000/year, \$137,000/year