

INTER-AMERICAN COURT OF HUMAN RIGHTS
MOOT COURT COMPETITION

ELENA MARIA BELAFONTE, PETITIONER

(Petitioner)

v.

THE COMMONWEALTH OF SAN SEBASTIÁN

(Respondent)

Memorial for the Petitioner

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STATEMENT OF THE FACTS

The Commonwealth of San Sebastián (“San Sebastián,” “Commonwealth,” “State”) is an independent commonwealth located in the Eastern Caribbean and has a population of 3.5 million in an area of about 7500 mi².¹ The commonwealth gained independence from Spain in 1898 after the Spanish-American War but functioned as an extension of Cuba until after the Cuban Revolution. In January 1965, San Sebastián formed its independent, anti-communist republic, with Spain as its largest trading partner and the Roman Catholic Church as its primary religious connection.² San Sebastián is closely tied with Spain and the Vatican; culturally, politically, traditionally, economically, functionally, and religiously. This gives San Sebastián a unique cultural dynamic concerning religion and the connection between Church and State, while it is constitutionally and legally secular, the nation has policies more similar to a conservative theocracy.³

San Sebastián thus has access to the European marketplace, has a relatively high-performing economy and ranks 49th in the world in economic prosperity in the Legatum Prosperity Index.⁴ San Sebastián is aligned with the Dominican Republic, CAFTA region, and the Anglophone Eastern Caribbean. It is a member of the Organization of American States (1945), the Organization of Eastern Caribbean States (1990), the Regional Security System (1982), CARICOM and the CARICOM Regional Task Force on Crime and Security (2003).⁵ Their multilateral security agreements have allowed San Sebastián to spend more of the annual budget toward infrastructure and education rather than high military expenditures.⁶ San

¹ Hypothetical ¶ 1.1

² Ibid. ¶ 1.1, 1.2

³ Ibid. ¶ 1.5

⁴ Ibid. ¶ 1.3

⁵ Ibid. ¶ 7.2, 1.4

⁶ Ibid. ¶ 1.6

Sebastián’s education system is well-supported and relatively successful when compared to other nations in the region, with literacy rates over 97% and high spending on elementary and secondary education.⁷

During the Global Economic Recession of 2008, the Commonwealth of San Sebastián officially partnered with the Vatican on an educational support program. The Teach-Them-Together Initiative of 2008 (“TTTI”) allows local parishes to officially partner with state schools by providing charitable donations up to 50% of the total budget, in return for a proportional discount off the dioceses’ property tax. Under this agreement, the State maintains full discretion with managing staff, deciding curriculum, and enforcing rules and procedures; the parish churches have the ability to earmark money for budget line items like teacher salaries and pension funds or other activities.⁸ Teachers at all national schools are protected by San Sebastián’s labor laws.⁹ The Equal Opportunity in Service Act (“EOSA”) was signed into law by the president of San Sebastián in 2009, which made it illegal for official state and government bodies, departments, or entities to discriminate against or punish an employee due to their gender, race, ethnicity, religion, or sexual orientation.¹⁰

San Sebastián consists of 175 municipalities within fifteen departments across the commonwealth. The Córdoba Department is in the mountainous and agrarian region of rural San Sebastián in the north and is the location of the Maldoba Municipality School System. The school system of Maldoba Municipality serves around 10,000 students, divided into ten primary schools (grades K-8) and four secondary schools (grades 9-12), each of which are overseen by

⁷ Ibid. ¶ 2.1

⁸ Ibid. ¶ 2.3

⁹ Ibid. ¶ 4.2

¹⁰ Ibid. ¶ 2.4

the headmaster.¹¹ Under the Teach-Them-Together Initiative, Maldoba Municipality's fourteen schools receive anywhere from 40-49% of their total annual operating budget from Sor Juana Parish, and the property tax for the parish church is reduced 70%.¹² A majority of Maldoba Municipality's population lives within the ecclesiastical jurisdiction of the Sor Juana Parish Church; the congregation consists of 93% of Maldoba's adult population and the church is led by Father Josue Maldonado, the Parish priest.¹³

On November 1, 2020, Ms. Elena Maria Belafonte, a 53-year-old math teacher at one of Maldoba Municipality's secondary schools, was fired from her position and disqualified from the teacher retirement pension.¹⁴ Ms. Belafonte worked for the municipality for over 27 years, after being originally hired as a primary school teacher in 1993 and took the secondary school position in 2009. Over the years, Ms. Belafonte was commended for her skills as an educator and received the "Teacher of the Year" award eight times; no one ever filed a complaint against her nor did she ever have to be reprimanded or disciplined.¹⁵ During the mandatory quarantine due to the COVID-19 pandemic, Ms. Belafonte uploaded a series of stories to her WhatsApp account to greet her students.¹⁶ One video from the series posted on May 7, 2020 comprised of Ms. Belafonte singing a song to her students, while accompanied by 39-year-old musician Ruby Olivera, who Ms. Belafonte referred to as her "partner" and "special friend." On May 17, the video of Ms. Belafonte and Ms. Olivera came to the attention of Father Maldonado, and he requested to meet with the two women. On May 19, the two women granted the Father's request

¹¹ Ibid. ¶ 3.1

¹² Ibid. ¶ 3.2

¹³ Ibid. ¶ 3.2, 4.3, 4.4

¹⁴ Ibid. ¶ 3.4

¹⁵ Ibid. ¶ 4.1

¹⁶ Clarification Question 49

for an unofficial conversation, and Father Maldonado learned at this time that Ms. Belafonte and Ms. Olivera were in a committed relationship.¹⁷

On May 31, Father Maldonado met with the headmaster and the municipality superintendent to ask that Ms. Belafonte be reassigned to a non-teaching position. Father Maldonado officially states that the parish church would be uncomfortable with employing someone who behaved in an “irresponsible and unprofessional manner,” but is not specific as to what constituted unprofessional conduct. Over several months and additional conversations, Father Maldonado began threatening to withdraw school funding. The threats were that unless the school did something regarding Ms. Belafonte’s employment, the parish church would stop their charitable donations. In October 2020, the last conversation took place between the headmaster and Father Maldonado, who was accompanied by the Bishop of San Sebastián, the highest-ranking representative of the Catholic Church in the nation. On November 1, Ms. Belafonte was let go all together, and due to the nature of her release, is unable to qualify for her pension she had been contributing to for 27 years.¹⁸ For the entire duration of the conversations between Father Maldonado and the headmaster from May 2020 to November 2020, Ms. Belafonte was employed in her position as a secondary school math teacher.¹⁹

On January 3, 2021, Ms. Belafonte filed a civil case against the Maldoba Municipality school administration, calling her termination unconstitutional as it was in violation of the Equal Opportunity in Service Act, as she was fired due to her sexual orientation. Ms. Belafonte calculated a total of \$450,000 to cover the cost of her remaining salary, what she would receive of her pension, and punitive damages. On January 17, the lower court dismissed the case citing

¹⁷ Hypothetical ¶ 4.3

¹⁸ Ibid. ¶ 3.2, 4.4

¹⁹ Clarification Question 14

her termination was on reasonable grounds.²⁰ Ms. Belafonte brought up her case on appeal to the Appellate Court of Córdoba Department, which upheld the lower court's ruling on February 24.²¹ The Supreme Court of San Sebastián upheld the original ruling on April 5, 2021; this was Ms. Belafonte's third and final domestic appeal.²² Ms. Belafonte then filed an individual petition on May 10, 2021 before the Inter-American Commission on Human Rights ("the IACHR", "the Commission"), arguing that Maldoba Municipality, and therefore San Sebastián, assumed international responsibility for discriminating against her based on her orientation. Ms. Belafonte asserts in the petition that the State of San Sebastián was in direct violation of Articles 11.2, 12.3, 13.3 all in relation to Article 1.1 of the American Convention on Human Rights. The State objected to the admissibility of Ms. Belafonte's petition on the grounds that this is an internal labor law question that must be solved using domestic resources, as well as the reason for termination being the publicizing of the relationship.²³ The Commission issued its report on admissibility and merits (Report 18/2021) and rendered majority decisions on possible violations of Articles 1 and 12, and agreed unanimously on Article 11; the Commission did not reach a consensus on the violation of Article 13. The Commonwealth of San Sebastián received the Commission's recommendations and did not find them necessary to implement; the case was submitted to the Inter-American Court of Human Rights on October 15, 2021 with a hearing date for November 4-7, 2021.²⁴

²⁰ Hypothetical ¶ 5.1

²¹ Ibid. ¶ 5.2

²² Ibid. ¶ 5.3

²³ Ibid. ¶ 6.5

²⁴ Ibid. ¶ 6.4, 6.6

LEGAL ANALYSIS

I. ADMISSIBILITY

A. Statement of Jurisdiction

The Commonwealth of San Sebastián was a founding member of the OAS in 1945 as a part of Cuba and was granted charter again in 1965 as an independent commonwealth.²⁵ San Sebastián is a party to numerous human rights and international humanitarian law treaties in the OAS and the United Nations, including; the American Convention on Human Rights (adopted in 1969 and entered into force in 1970); the Geneva Conventions (since 1949), as well as the three Additional Protocols of 1977 and 2005; the Inter-American Convention to Prevent and Punish Torture (ratified 1992); and has recognized the jurisdiction of the Inter-American Court of Human Rights since 1982.²⁶

B. Exhaustion of Domestic Remedies

Prior to her petition to the Inter-American Commission on Human Rights (“the IACHR”) Ms. Belafonte brought a civil case against San Sebastián on January 3, 2021 and the court dismissed the case. The lawsuit was then brought before the regional appellate court, and eventually an appeal was taken with the Supreme Court of San Sebastián. Ms. Belafonte sought \$450,000 in damages by calculating her remaining salary and pension benefits, as well as punitive costs. Domestic remedies were exhausted with the Supreme Court upholding the original ruling on April 5, 2021. Ms. Belafonte brought her case before the Inter-American Commission on Human Rights.²⁷ After proper procedural measures, the Commission issued its report on admissibility and the merits and asked the State to implement its recommendations.²⁸

²⁵ Hypothetical ¶ 7.2

²⁶ Ibid. ¶ 7.3

²⁷ Ibid. ¶ 5

²⁸ Ibid. ¶ 6

II. VIOLATIONS

A. The American Convention on Human Rights

Observing with the Inter-American Commission's findings for the Commonwealth of San Sebastián, the Petitioners assert violations of the American Convention on Human Rights Articles, 1, 11, 12, and 13, and consequently request that the Court order the State to perform *resitutio in integrum*, in line with this Convention.

B. The American Declaration of the Rights and Duties of Man

Based on further findings, Petitioners also assert violations of the American Declaration of the Rights and Duties of Man Articles 4, 5, 10, 14, and 22, and thus ask the Court to order the State to perform *resitutio in integrum*, in line with this Declaration and other relevant human rights instruments.

III. ARGUMENTS ON THE MERITS

A. Article 1: Obligation to Respect Rights

Article 1 of the American Convention on Human Rights constitutes the general obligations of the State and rights protected in the Convention, "to respect... and full exercise of those rights 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."²⁹ The Petitioner holds that regardless of the State's defense in lower courts, Ms. Belafonte was first and foremost discriminated against due to the gender and sexual orientation of both herself and her partner by a third party and ultimately by the State. Without the collective information only known to the Parish Priest, the Maldoba Municipality would have no reason to

²⁹ American Convention on Human Rights, Art. 1.1

terminate Ms. Belafonte due to her good reputation as an educator. Moreover, the persistent threats from the Sor Juana Parish and Father Maldonado to push the school into disciplinary action is not in line with the boundaries administered by the State's Teach-Them-Together Initiative as schools hold full discretion on disciplinary action.³⁰ This donation agreement is voluntary and Ms. Belafonte's employment was long-standing even before the initiation of this educational support program.

The Court has ruled in favor of both men and women who have discriminated against on the basis of their sexual orientation by those who excuse their prejudices for preserving morals and the well-being of children. Remedies for the case of *Atala Riffo and Daughters vs. Chile* (2012) included requiring the state to create legislation, policies, initiatives, and programs against discrimination on the bases of sexual orientation.³¹ The Court has also ruled in favor of a homosexual man who filed a petition on the obligation of non-discrimination, and ruled that he did in fact exhaust all domestic remedies despite the States objections.³² The Petitioners hold the Commonwealth of San Sebastián violated Article 1 in the case of Ms. Belafonte.

B. Article 11: Right to Privacy

The American Convention on Human Rights not only asserts that every person must be respected, but that "No one may be the object of arbitrary or abusive interference with his private life, his friends, his home, or his correspondence, or of unlawful attacks on his honor or reputation."³³ By terminating Ms. Belafonte under "conduct unbecoming an educator," the State equated her action, her sexual orientation and/or the publicizing of said orientation and relationship, with extreme precedents. The school has only previously fired three teachers and

³⁰ Hypothetical ¶ 2.3

³¹ *Case of Atala Riffo and Daughters v. Chile* Merits Report No. 40.3 (2012) ¶ 4

³² *Case of Duque v. Colombia* (2017) ¶ 3

³³ American Convention on Human Rights, Art. 11.2

disqualified them from receiving their pension; a teacher who had a sexual relationship with a minor student, a teacher combatant and argumentative about his political views, and a teacher who took part in a pornographic film during her time as a teacher.³⁴ The record states that the video series “contained no objectionable behavior of a pornographic nature and was entirely G-rated.”³⁵ There are no uses of this precedent in San Sebastián schools, in the record, for firing a teacher for being openly in a heterosexual relationship, or for posting information online about being in a non-marital but committed relationship with someone of the opposite sex.

Equating Ms. Belafonte’s actions with those of a pedophile, an aggressive disputant, and a pornography actor is an arbitrary attack on her honor and reputation by the State on Ms. Belafonte’s rights afforded to her by Article 1.1 of the American Convention on Human Rights due to this Article 11 violation. The Court has ruled in favor of LGBTI persons on Article 11.2 and ruled that “private life includes her sexual orientation, which is protectable in a democratic society.”³⁶ Therefore, public authorities or other third parties cannot abusively or arbitrarily intrude on an individual’s sexual orientation. The Court has also recognized Article 11’s right to privacy “encompasses a person’s sexual life” and is protected.³⁷

Furthermore, the State was presented a choice by Father Maldonado in which Ms. Belafonte could have been reassigned to a non-teaching role, thus fulfilling their obligation to provide education not violating the rights of the Diocese.³⁸ By disqualifying her from accessing her pension, San Sebastián overextended their obligations under the contract with the Sor Juana Parish Church for earmarking money for teacher salaries and pensions.³⁹ The Court has decided

³⁴ Clarification Question 38

³⁵ Ibid. 53

³⁶ *Case of Atala Riffo and Daughters v. Chile* (2012) ¶ 3

³⁷ *Case of Río Negro Massacres v. Guatemala* (2014) ¶ 3, 133

³⁸ Hypothetical ¶ 6.3

³⁹ Clarification Question 32

on two cases regarding terminated employees access to pension funds even when the State has argued inadmissibility due to it being an internal labor dispute, and has awarded monetary damages even with when victims have not had substantial proof of exact amounts.⁴⁰ Ms. Belafonte has sufficient evidence and exact monetary amounts she is owed by the State.⁴¹ The Court has also awarded additional punitive damages to victims, and required the State to reinstate workers to their jobs or similar positions, and be paid compensation for lost wages and retirement pensions.⁴²

C. Article 12: Freedom of Conscience and Religion

The freedom of conscience and religion as outlined in Article 12 of the American Declaration on Human Rights states “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.”⁴³ There were no prescribed legal limitations on Ms. Belafonte’s ability to either be in a lesbian relationship and/or be open about said relationship online or with her students. In fact, she was protected by the domestic laws under the Equal Opportunity in Service Act, which states it is illegal to punish an employee because of their gender, religion, or sexual orientation.⁴⁴ Regardless of the legitimacy of the officially stated reason of the publicization of her lesbian relationship, firing Ms. Belafonte for the video with Ms. Olivera is disciplinary action on the basis of her gender and sexual orientation, as these are core components of the issue the parish priest had with the videos. Referring to her sexual

⁴⁰ *Case of Acevedo Buendía et al. v. Peru* (2009)

⁴¹ Hypothetical ¶ 5.1

⁴² *Case of Acevedo Jaramillo et al. v. Peru* (2006)

⁴³ American Convention on Human Rights, Art. 12.3

⁴⁴ Hypothetical ¶ 6.3

orientation as a lesbian and as someone in a same-sex relationship in any capacity is connected to her social condition as a woman, a lesbian, and a practicing Catholic.

The Commission has issued a report on the varieties of violence, discrimination, and prejudice that inhibits LGBTI persons from being able to enjoy rights and freedoms endowed to them as human beings. The report identifies how “the expression of non-normative sexualities and identities is often in itself regarded with suspicion, considered a danger to society, or seen as a threat to social order and public orders.”⁴⁵ This then leads to law enforcement, government officials, of third-party entities contribute to the cycle of violence against LGBTI persons as it is “a form of gender-based violence, driven by desire to punish those seen as defying gender norms.”⁴⁶ Furthermore, recognized the risk for violence and discrimination due to “even the ‘perception’ of being gay or trans puts people at risk. The Court has determined that in some situations it is “not so much whether a person recognizes himself or herself as [gay], but rather whether he or she is “perceived” as such by third persons or is identified as a member of a given social group” that leads to violence and discrimination motivated by prejudices against LGBTI persons.⁴⁷

The United Nations has written on the merits of comparable cases, stating how “limitations on the freedom to manifest a religion of belief for the purpose of protecting morals must be based on principles not derived exclusively from a single tradition.”⁴⁸ The objection to Ms. Belafonte’s perceived relationship with Ms. Olivera is based on the Judeo-Christian traditional understanding of homosexuality, which has theological debates on its merits. Furthermore, Article 12.4 guarantees the right of parents and guardians to provide religious and moral education to their

⁴⁵ IACHR Report, OAS/Ser.L/V/II/rev.1., ¶ 28

⁴⁶ OHCHR Report, A/HRC/19/41 (2011) ¶ 20

⁴⁷ *Case of Flor Freire v. Ecuador*, Merits Report No. 81/13 (2013) ¶ 82

⁴⁸ *Human Rights in the Administration of Justice*, Chapter 12, ¶ 2.3.1

children that is in line with their beliefs. Father Maldonado is not a parent or guardian of any Maldoba Municipality school children thus in violation of this article to request public schools to conform their employees to certain religious beliefs or understandings. When faced with similar issues regarding conflict of freedom of religion and belief, thought, ad conscience, other schools international have made the choice to reassign teachers to non-teaching roles, thus preserving their honor and reputation and access to their pension.⁴⁹

D. Article 13: Freedom of Thought and Expression

Article 13 of the American Convention on Human Rights states is a multifaceted article protecting the freedom of thought and expression “of all kinds, regardless of frontiers... through any other medium of one’s choice.”⁵⁰ More specifically Article 13.3 reads, “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over...equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”⁵¹ Neither the State of San Sebastián, nor Father Maldonado as the priest for the Sor Juana Parish, has the prescribed authority to dictate disciplinary action due to the dissemination of information. The content of the video series was unassuming and one video out of the series showed two women in a close relationship singing a song during the most isolating period of a worldwide pandemic.

The record is clear that while collective context “made it clear to most observers” including Father Maldonado, that Ms. Belafonte and Ms. Olivera were in a romantic relationship, the videos themselves “contained no objectionable behavior of a pornographic nature and was

⁴⁹ Communication No. 736/1997, *M. Ross v. Canada* (Views adopted on 18 October 2000), in UN doc. GAOR, A/56/40 (vol. II), pp. 84-85, ¶ 11.6.

⁵⁰ American Convention on Human Rights, Art. 13.1

⁵¹ *Ibid.*, Art. 13.3

entirely G-rated.”⁵² The component items of information known to the school and Father Maldonado were the posted videos, Ms. Belafonte referring to Ms. Olivera in ambiguous terminology like “partner” and “special friend,” and the groups meeting that “was considered a religious matter similar to a confessional.”⁵³ By refusing to act on the Church’s threat that Ms. Belafonte be reassigned or removed, the State further exacerbated the situation thus contributing to her harsher punishment under “conduct unbecoming an educator,” meaning she is unable to get her non-transferrable pensions which she has been contributing to for 27 years. The Court has ruled that “the State also has an obligation to ensure that the violation does not result from the ‘private controls’” in reference to Article 13.3 and has in favor of Petitioners who have had their freedom to thought and expression violated.⁵⁴ Furthermore, the Court has ruled that the State obligation to protect these rights due to acts and omissions of State officials and third parties.⁵⁵

⁵² Clarification Question, 53

⁵³ *Ibid.*, 18

⁵⁴ *Case of Olmedo Bustos et al. v. Chile* (2001) ¶ 3, 4

⁵⁵ *Case of Ríos et al. v. Venezuela* (2009)

REQUEST FOR RELIEF

For the above stated reasons, the petitioner respectfully asks that the Court:

1. Find the Commonwealth of San Sebastián in violation of Articles 11, 12, and 13 all in relation to Article 1(1) of the American Convention on Human Rights.
2. Find the Commonwealth of San Sebastián in violation of Articles 4, 5, 10, 14, and 22 of the American Declaration of the Rights and Duties of Man.
3. Require the State to either;
 - a. Reinstate Ms. Belafonte at her previous position as the Maldoba Municipality secondary math teacher at her previous rate of pay, with compensation for time lost while wrongfully terminated, and make her eligible for her pension, or
 - b. Amend her file to reflect that she was terminated by the school administration without due cause and without misconduct, or misgiving, to reflect her impeccable record as an educator, thus activating her annual pension immediately.
4. Require the State revise and strengthen the enforcement of the Equal Opportunity in Service Act to protect state employees against discrimination based on social location and expanding that enforcement by working with (through partnership or financial support) any agencies that receives federal tax revenue intended for promotion of the general welfare of the people.
5. Require the State to amend the legal details of the Teach-Them-Together Initiative, making clear the limitations on the church of other benefactors with regard to oversight of the school system's day-to-day operations, management, structural hierarchy, curriculum, and disciplinary codes and regulations.

- a. To add a sunset clause or a plan to scale back involvement of the church in national, secular education once the State has financially recovered to pre-pandemic levels.
 - b. To add clear instructions regarding the steps that need to be taken when a teacher's conduct (during and outside of their responsibility as a teacher) does not align with the moral conditions or teachings of the Catholic Church.
6. Recognize Ms. Belafonte's career as an educator for the State of San Sebastián has been exemplary, as proven by her impeccable 27-year tenure with the national school system and eight distinct "Teacher of the Year" awards.
7. Recognize Ms. Belafonte's wrongful termination under the guise of "conduct unbecoming an educator" was due to her social condition as a woman in a lesbian relationship, and not due to social media posts that allegedly publicized "unprofessional behavior."