

THE 2021 EUGENE SCASSA MOCK OAS PROGRAM
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION

IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS

November 2021

Elena Maria Belafonte,

Petitioner

v.

The Commonwealth of San Sebastián,

Respondent

MEMORIAL FOR THE PETITIONER

TABLE OF CONTENTS

TABLE OF CONTENTS..... 3

INDEX OF AUTHORITIES..... 4

STATEMENT OF JURISDICTION..... 5

STATEMENT OF FACTS..... 6

PLEADINGS..... 9

I. THE STATE’S ACTIONS AGAINST AND FAILURE TO PROTECT MISS

BELAFONTE VIOLATED INTERNATIONAL HUMAN RIGHTS LAW.

A. Article 13: Freedom of Thought and Expression..... 9

B. Article 1: Obligation to Respect Rights, Article 24: Right to Equal

Protection..... 10

C. Article 11: Right to Privacy..... 12

REQUEST FOR RELIEF..... 14

INDEX OF AUTHORITIES

American Convention of Human Rights..... 1, 11, 12, 13, 24

Hypothetical Case..... 1, 2, 3 ,4, 5, 6, 7

Clarification Questions..... 1-56

Granier et al. v. Venezuela

Atala Riffo and Daughters v. Chile

Espinoza González v. Peru

I.V. v. Bolivia

STATEMENT OF JURISDICTION

The Commonwealth of San Sebastián (the ‘State’) was a founding member of the Organization of American States (OAS) as part of Cuba in 1945.¹ Following its independence, the State reapplied for OAS membership in 1965.² San Sebastián adopted and entered into force the American Convention on Human Rights in 1970 and has also ratified the Geneva Conventions and its three Subsequent Protocols (in 1949, 1977, and 2005 respectively).³ The State has recognized the contentious jurisdiction of the American Court of Human Rights (the ‘Court’) since 1982.⁴

Prior to petitioning this Court, the petitioner, Miss Elena Maria Belafonte, pursued the State’s domestic justiciary options: a suit at the civil level, an appeal at the appellate level and a final appeal with the State’s Supreme Court,⁵ to no avail.

¹ Hypothetical Case. §7 para. 2. (2021).

² Id.

³ Hypothetical Case. §7 para. 3. (2021).

⁴ Id.

⁵ Id.

STATEMENT OF THE FACTS

The Commonwealth of San Sebastián is a small Caribbean island with a population of 3.9 million people. San Sebastián's government is constitutionalist and secular, with 98% of the population reporting as Roman Catholic, though its policies are more conservational and theocratic.⁶ San Sebastián is a member in good standing of the international community despite recent criticisms from both Human Rights Watch and the United Nations Commission on Human Rights regarding their discriminatory treatment of homosexuals and transgendered persons.⁷

The unique cultural dynamic between religiosity and government in the country led to the creation, in partnership with the Vatican, of a system of bilateral funding for education: Up to 50% of a school's budget may be charitably provided by its local church parish, with the remainder will come from the state. In return for the churches' generosity, the parishes receive a significant reduction in property taxes.⁸

Elena Maria Belafonte is a native of San Sebastián who began her career as an educator in 1993 as a primary school teacher where she worked for 16 years until 2009 when she accepted, a position as a math teacher at a secondary school – the same position she maintained until her termination in November of 2020.⁹ Miss Belafonte has never had disciplinary action taken against her and won “Teacher of the Year” awards in 1998, 2001, 2004, 2005, 2010, 2012, 2014, and 2018.¹⁰

On May 7, 2020, during COVID-19 lockdown Miss Belafonte published a series of video greetings to her public WhatsApp story for her students to view. In one of the videos, Miss

⁶ Hypothetical Case. §1 para. 5.

⁷ Hypothetical Case. §7 para. 1. (2021).

⁸ Hypothetical Case. §2 para. 3.

⁹ *Ibid.*

¹⁰ *Ibid.*

Olivera—a 39-year-old musician—made one or more appearances during which Miss Belafonte referred to Miss Olivera as her “partner” and “special friend.” The reference to the couple’s existence as a romantic pair circulated the community by rumor before reaching Father Maldonado on May 17th, 2020, at which point the priest requested a meeting between himself, Miss Olivera, and Miss Belafonte. The three met on May 19th, 2020 when Father Maldonado did uncover, in confidence, that the two were, in fact, in a lesbian relationship.¹¹

Though there is no record of complaints having been received from the parents of Miss Belafonte’s students at neither the school nor the parish,¹² Father Maldonado met with the headmaster and superintendent of Miss Belafonte’s school on May 31st, 2020 to discuss having her position relegated to a non-teaching role, specifically citing “increasing outcry from his congregation.”¹³

Though his initial request was refused by the headmaster, Mr. Maldonado’s persistence and increasingly serious threats to withhold funding were enough by October 2020 to coerce Miss Belafonte’s superiors into releasing her from duty. Miss Belafonte was terminated by the headmaster of her school in November 2020. Due to the nature of her termination, she does not qualify for a pension.¹⁴

Miss Belafonte filed suit against the Maldoba Municipal School Administration on January 3rd, 2021 seeking \$450,000 in damages and citing a domestic statute passed in 2009 called the Equal Opportunity in Service Act – saying that her termination was unconstitutional, “as it was executed on the sole basis of her sexual preference.”¹⁵ The municipal court ruled that

¹¹ *Ibid.*

¹² Hypothetical Case Clarification Questions. Qn. 13. (2021).

¹³ Hypothetical Case. §4 para. 4. (2021).

¹⁴ *Id.*

¹⁵ Hypothetical Case. §6 para. 1. (2021).

publicizing her lesbian relationship was unprofessional and sufficient for termination. Miss Belafonte's appeal was heard and the decision of the lower court was upheld on February 24th, 2021. Her third and final appeal was not heard, but instead dismissed by the Supreme Court of San Sebastián, ruling that the dismissal was "in the best interest of protecting the school system from unnecessary financial hardship."¹⁶

¹⁶ Hypothetical Case. §6 para. 3. (2021).

PLEADINGS

I. THE STATE’S ACTIONS AGAINST AND FAILURE TO PROTECT MISS BELAFONTE VIOLATED INTERNATIONAL HUMAN RIGHTS LAW.

A. Article 13: Freedom of Thought and Expression

Miss Belafonte’s rights were violated when Father Maldonado, a person with undue authority over Maldoba Municipality’s governmental body, sought to have Miss Belafonte dismissed from her duties as a teacher on the grounds that she had behaved unprofessionally in a video greeting she posted to the media platform “WhatsApp.”

Article 13.3 of the American Convention on Human Rights (ACHR) grants:

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

As recently as 2015, the Inter-American Court of Human Rights (hereafter referred to as ‘Court’) has interpreted freedom of expression (see *Granier et. al. v. Venezuela*)¹⁷ as being multi-faceted – “freedom of expression functions in both an individual and collective capacity.”¹⁸ The Court has postulated an understanding of Article 13 wherein individuals are protected in their dissemination of ideas and the collective is entitled to hear the ideas of third parties. The Court assessed: “A state radically violates Article 13...when it uses its authority to ‘prevent the free circulation of information, ideas, opinions, or news.’”¹⁹

Mr. Maldonado and the Roman Catholic Church exemplify entities with immense private control within the government of San Sebastián, which they exert for their own political and

¹⁷ Granier et al. v. Venezuela. 42.4 Inter-American Court of Human Rights 1466 (2015).

¹⁸ Id.

¹⁹ Id.

financial gains. In this case, they have made clear their political goal to impede the dissemination of ideas they and their faith have denounced as unbecoming – specifically, sexuality. Though the State “initially refused the request [to have Miss Belafonte removed from her position],” Mr. Maldonado persisted with his insistence until, finally, with the aid of the Bishop of San Sebastián, the headmaster of the Maldoba Secondary School System caved to the Church’s imploration that Miss Belafonte be relieved of her duties.

The State’s complicity in allowing a non-governmental actors to abridge the right of Miss Belafonte to refer to her chosen romantic partner in any manner publicly or to circulate that information is representative of a systemic inability to curtail third-parties from obstructing the State in the execution of their responsibilities as a sovereign body and those put forth in the American Convention on Human Rights.

B. Article 1: Obligation to Respect Rights, Article 24: Right to Equal Protection

The government of San Sebastián failed to equitably apply the domestic Equal Opportunity in Service Act (‘EOSA’) to Miss Belafonte, thereby neglecting their responsibility, as an adoptee of the American Convention on Human Rights (‘ACHR’), to afford their citizens equality before the law.

Article 1 of the ACHR grants:

*The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free 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.*²⁰

²⁰ Organization of American States. “American Convention on Human Rights.” Treaty Series, No. 36. San Jose: Organization of American States. Article 1. 1969.

Article 24 of the ACHR grants:

*All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.*²¹

In the past, where the Inter-American Court of Human Rights has been unable to reference explicit proof of harm to children as the result of a person's sexual preferences, it has found that the restriction of protected rights is not enforceable. See *Atala Riffo and Daughters v. Chile* (2012) where the Court noted: "failure to demonstrate 'explicit proof of damages' is an unsuitable standard for restricting protected rights."²²

In this instant case, the State classified a divulsion of fact imparted by Miss Belafonte on the public platform WhatsApp as "conduct unbecoming an educator." The fact in question is here split in two: (1) the existence of a homosexual relationship between Miss Belafonte and Miss Olivera and (2) the introduction of said relationship to students. If *Atala Riffo* were to serve as a guide to the instant case, sufficient enough "proof" of harmful effects upon the students as a result of facts one (1) or two (2) or both has not been presented by the State.

Where Article 24 is concerned, the State abrogated a protection (the EOSA) – which explicitly prohibits the discrimination of government workers (such as those employed by the national education system) on the basis of, *inter alia*, sexual orientation²³ – when the circumstances benefited the State for the purposes of financing their education system, even going so far as to claim that the dismissal of Miss Belafonte's case was "in the best interest of protecting the school system from unnecessary financial hardship,"²⁴ all but admitting that Miss

²¹ Organization of American States. "American Convention on Human Rights." Treaty Series, No. 36. San Jose: Organization of American States. Article 24. 1969.

²² *Atala Riffo and Daughters v. Chile* 40.3 Inter-American Court of Human Rights 1522. (2012).

²³ Hypothetical Case. §2 para. 4. (2021).

²⁴ Hypothetical Case. §5 para. 3. (2021).

Belafonte's dismissal was appurtenant to factors outside those concerning her performance as a teacher and influence of her students.

Therefore, the State not only failed but knowingly neglected to perform in a manner consistent with the EOSA for the primary purpose of avoiding financial hardship and in doing so deprived Miss Belafonte of fair consideration under the law in the course judicial proceedings pertinent to her case – a violation of international law under Articles 1 and 24 of the ACHR.

C. Article 11: Right to Privacy

Miss Belafonte's Right to Privacy was impeded twofold: firstly, when the intimate details of her conversation with Mr. Maldonado were conveyed without her consent by Mr. Maldonado to the superintendent and headmaster of her school; and again when the State derelicted to respond in accordance with the ACHR.

Article 11 of the ACHR grants:

- (1) Everyone has the right to have his honor respected and his dignity recognized.*
- (2) No 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.*
- (3) Everyone has the right to the protection of the law against such interference or attacks.*

Going back to *Espinoza González v. Peru* (2011), this Court determined Article 11 “prohibits unjustified intrusions into the private lives of individuals. The Court stated this included an individual's sexual well-being and dignity.”²⁵ Additionally, it was postulated in *I.V. v. Bolivia* (2016) that Article 11 is intended to allow individuals the liberty to “live according to their intentions, will and own life decisions.”²⁶ The two concepts reflect a clear-cut interpretation

²⁵ *Espinoza González v. Peru* 40.3 Inter-American Court of Human Rights 1423. (2011).

²⁶ *I.V. v. Bolivia* 41.4 Inter-American Court of Human Rights 1366. (2016).

of Article 11 wherein the Court evaluates any unnecessary intrusion of privacy with a heightened scrutiny.

In this case, State actors – namely the Superintendent and Headmaster, in tandem with representatives of the Roman Catholic Church, namely Father Maldonado and the Bishop of San Sebastián, have perpetrated an unjustified intrusion into the private life of Miss Belafonte: First in the breach of confidence on the part of Father Maldonado—when he conveyed private and intimate information about Miss Belafonte’s sexual preferences to the superintendent and headmaster of her school without her knowledge or consent—thereafter in the dissemination of Miss Belafonte’s sexual preferences which ensued her heretofore unfinished juridical endeavor to retore some semblance of preferred normalcy to her life.

The Commonwealth of San Sebastián, in failing to prevent harmful intrusion upon Miss Belafonte’s privacy and dismissal from service, fell short of upholding the international law decreed by the American Convention on Human Rights, of which it is a signatory. Therefore, if the Court’s understanding of Article 11 holds as in *González* and *I.V.*—that understanding being bulwark against unnecessary intrusions of privacy—the Court should recommend now in favor of Miss Belafonte’s Request for Relief.

REQUEST FOR RELIEF

For the reasons heretofore presented, the petitioner Elena Maria Belafonte respectfully requests that this Court recommend the following of the Commonwealth of San Sebastián:

- I. Introduce legislative reform amending the Teach-Them-Together Initiative to exclude the Church or other benefactors with regard to the oversight of the school system, including by indirect means such as “earmarking” contributions for choice attributions.
- II. Either (a) reinstate Miss Belafonte to her previous position and at her previous rate of pay, with compensation for time lost while terminated, and make her eligible for pension once more or (b) amend her file to reflect that she was terminated by the school administration without due cause and without misconduct or misgiving and activate her annual pension immediately.
- III. Strengthen the enforcement of the Equal Opportunity in Service Act, and further expand that enforcement to any organization seeking to work with (through partnership or financial support) any agency that receives federal tax revenue intended for promotion of the general welfare of the people.