

**2021 ESMOAS COLLEGIATE SUMMIT OF THE AMERICAS
INTER-AMERICAN COURT OF HUMAN RIGHTS MOOT COURT COMPETITION
HYPOTHETICAL CASE**

“ELENA MARIA BELAFONTE, PETITIONER

v.

THE COMMONWEALTH OF SAN SEBASTIÁN”

I. The Commonwealth of San Sebastián: Background Information

1. **Geography:** The Commonwealth of San Sebastián is an independent commonwealth located in the Eastern Caribbean region of the Americas. It has a population of 3.5 million and covers a surface area of around 7500 mi². The commonwealth is closely tied to Spain, which owned the island until 1898 and is still its largest trading partner.
2. **History:** San Sebastián was populated by indigenous groups from the Arawak language group and culture until 1493, when Spanish explorer Christopher Columbus landed and claimed the island for Spain. It was incorporated into the Viceroyalty of New Spain in 1521 and remained part of that jurisdiction until 1764, when it came under the jurisdiction of the Captaincy General of Cuba. San Sebastián functioned essentially as an extension of Cuba until the Spanish-American War, when it was ceded, along with Cuba, to the United States in 1898. The U.S. granted San Sebastián formal independence along with Cuba in 1902. After the end of the Cuban Revolution in 1959, residents of San Sebastián, who were staunchly anti-communist, petitioned for independence from Cuba and were granted it six years later in January 1965.
3. **Governmental Structure:** Because of its close ties to Spain and, by extension, the European markets, San Sebastián enjoys a relatively high-performing economy for the area, placing firmly in the upper middle economy range. The Legatum Prosperity Index ranks it 49th worldwide in economic prosperity, and has grown faster than other economies in the area.

4. **Regional Alliances:** Due to its rift with Cuba in the 1950s and its unique position as the only Spanish-speaking country in the Anglophone Eastern Caribbean, San Sebastián aligns itself with both the Dominican Republic and CAFTA region and the Anglophone Eastern Caribbean. It is a member of the Organisation of Eastern Caribbean States (joined 1990), the Regional Security System (since 1982), CARICOM and the CARICOM Regional Task Force on Crime and Security (joined 2003, resulting in the addition of Spanish as an official language of the organization). 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 annual budget toward infrastructure and education.
5. **Religious Ties:** San Sebastián's Spanish heritage has created a cultural dynamic unique to the region with regards to religion and the relationship between Church and State. The island is overwhelmingly Roman Catholic (over 98% 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 toward that of a conservative theocracy. Since its independence in 1952, San Sebastián has never elected a president, regional governor, or significant mayor who was not a member of the Catholic Church.

II. San Sebastián's Education System and Reform Projects

1. **Education System:** 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%. In the rural regions of the island, literacy and primary/secondary school attendance has lagged behind the urban areas, but still ranks well above the world and the hemispheric average. In 2019, San Sebastián spent approximately \$11,100 per full-time-equivalent (FTE) on elementary and secondary education, around 10% higher than the global spending average, according to the Organization for Economic Cooperation and Development (OECD).
2. **School Choice and Parallel Systems:** Since the arrival of Jesuit missionaries in 1628, San Sebastián's education system has maintained close ties to the Roman

Catholic Church even into the 21st Century. The national system includes elementary and secondary schools funded by the state and those primarily funded by the church, as well as state-run schools that receive more than half their annual funding from an educational support program sponsored by the Catholic Church.

3. **The Teach-Them-Together Initiative (2008):** The Global Economic Recession of 2008 was particularly difficult for San Sebastián, resulting in tax revenue decreases of over 30% compared to 2007. Consequently, the amount of money budgeted for education expenditures decreased by at least 25% nationally, leaving many schools (especially those in smaller towns and rural areas) with budget shortfalls, resulting in hiring freezes, layoffs, and some school closures. In response, the government officially partnered with the Vatican to begin a new educational support program. In this agreement, known as the “Teach Them Together Initiative,” each of the parishes in San Sebastián is allowed to provide, as a charitable gift, up to 50% of the total general operating budget of all schools within its jurisdiction. In return, the participating dioceses receive discounts on their property taxes (the only tax, other than payroll taxes, that the churches are required to pay). These discounts are applied on a proportional scale based on the level of funding support the churches provide the local schools. In the agreement, however, the state retains ownership of the property and full discretionary power in running the schools, including managing the staff, testing and curriculum, and enforcement of rules and procedures. Parish churches do retain some power to earmark the money for certain activities (e.g. music education) or budget line items (e.g. teacher salaries).
4. **The Equal Opportunity in Service Act (2009):** In 2009, the president signed into law the Equal Opportunity in Service Act (EOSA), which made it illegal for any government department or entity to discriminate against or punish an employee because of their gender, race, ethnicity, religion, or sexual orientation.

III. The Maldoba Municipality School System

1. **Location & Area of Service:** San Sebastián is divided into fifteen departments, which are subdivided into a total of 175 municipalities. The municipality of Maldoba

is located in Córdoba Department, which is in the mountainous northern third of San Sebastián and is a predominately rural, agrarian area. The Maldoba Municipality School System serves approximately 10,000 students and includes ten primary schools for grades K-8, with a combined enrollment of approximately 6300, and four secondary schools for grades 9-12, which enroll a combined 1800 students. The student population of Maldoba is primarily indigenous (79%), and predominately lower-income. The schools of the municipality are overseen by a municipal headmaster, who is the final authority on all human resource and curriculum decisions.

- 2. The School System and the Parish Church:** The majority of the population of Maldoba Municipality lives within the ecclesiastical jurisdiction of Sor Juana Parish. The congregation of Sor Juana Parish is led by the Parish Priest who is appointed by and under the direct supervision of the Bishop of San Sebastián, who is the highest-ranking representative of the Catholic Church in the country, and answers directly to the Vatican. Maldoba Municipality's fourteen schools receive approximately 40-55% of their total annual budget (percentage varies from year to year) from a charitable donation made by the Sor Juana Parish Church, of which 93% of the adult population of the municipality is a member. Consequently, Sor Juana Parish Church receives a 70% deduction on their property tax rate, and per agreement with the municipality, no less than 75% of the total annual donation must be used directly for teacher salaries and pension contributions.

IV. The Case of Elena Maria Belafonte

- 1. Career and Reputation:** Elena Maria Belafonte is a 53 year old secondary school teacher from Maldoba Municipality. She was initially hired in 1993 as a primary school teacher in the most remote primary school in the municipality, where she worked for 16 years. In 2009, she was offered and accepted a position as math teacher for the largest secondary school in the municipality. She worked in this position until November 1, 2020, when she was terminated by the headmaster for "conduct unbecoming an educator". In the time from her hiring in 1993 until the

firing in 2020, Miss Belafonte had no disciplinary actions taken against her, no complaints of any kind filed against her, and won “Teacher of the Year” awards in 1998, 2001, 2004, 2005, 2010, 2012, 2014, and 2018.

- 2. The Diocese Code of Moral Conduct for Employees:** All employees and appointed clergy of the Diocese of San Sebastián and the parishes that comprise it are required to sign and abide by a Code of Moral Conduct. Violations of any part of the conduct code result in warnings, censures, and, in severe cases, termination of employment. The teachers employed by the municipality schools are, however, state employees and are not directly subject to the Code of Moral Conduct, as per the Teach Them Together Initiative agreement. It should be pointed out, however, that the school system is aware that employment of teachers who violate the Code of Moral Conduct can place them at risk of losing donations altogether.
- 3. The Conduct Code Violation:** On May 7, 2020, during mandatory COVID quarantine, Miss Belafonte posted a series of video greetings to her students on the social media platform WhatsApp. In one of the videos, she sang a song for her students while accompanied by Ruby Olivera, a 39 year old musician that she introduced as her “partner” and “special friend” several times. Over the course of the next few weeks, discussions about the relationship between the two women spread across the community, until the video was brought to the attention of the parish priest on May 17. The priest, Father Josue Maldonado, requested a meeting with the two women and, on May 19, Miss Olivera and Miss Belafonte granted the request. During the conversation, Father Maldonado learned that the two women were indeed in a lesbian relationship.
- 4. Diocesan Response: Threats of Defunding:** Citing the increasing outcry from his congregation, Father Maldonado met with the headmaster of the secondary school and the superintendent of the municipal school system on May 31, 2020. During the meeting, Father Maldonado asked if Miss Belafonte could be quietly reassigned to a non-teaching role. When asked for his reasoning, Father Maldonado stated officially that the parish church was uncomfortable with the school retaining someone who behaved in such an irresponsible and unprofessional manner, though he did not specify whether the issue was with her relationship or the introduction to students to it

on social media. The headmaster initially refused the request, citing Ms. Belafonte's impeccable record and results. Several additional conversations took place over the following months, during which the parish priest increased the pressure. Requests escalated into threats from the parish that, unless something was done, the church would completely revoke all donations to the school. During the last conversation, in October 2020, the parish priest was accompanied by the Bishop of San Sebastián. On November 1st, Miss Belafonte was released from employment. Due to the nature of her release, she does not qualify for the teacher retirement pension.

V. Judicial Proceedings within the Country

1. Elena Maria Belafonte filed a civil case against the municipal school administration on January 3, 2021. Citing violation of the Equal Opportunity in Service Act, Miss Belafonte asserts that her firing was unconstitutional, as it was executed on the sole basis of her sexual preference. She sought \$300,000 for recovery of her \$25,000/year salary over the next twelve years until she would have become eligible for her pension of \$17,200/year. She also requested compensation for said pension, projected over eight years which would have been \$137,600/year. Total damages sought totaled \$450,000. The school headmaster, who testified in the case, argued that it was her publicizing her lesbian relationship on social media that constituted the "conduct unbecoming an educator," because her publicizing of the relationship was unprofessional. The court dismissed the case on January 17, 2021, citing that the grounds for firing were within reasonable bounds.
2. Ms. Belafonte appealed the ruling, and the case was brought before the Appellate Court of Córdoba Department, where the court upheld the lower court's ruling on February 24, 2021.
3. A third and final appeal reached the Supreme Court of San Sebastián, which rules that the dismissal was "in the best interests of protecting the school system from unnecessary financial hardship," and upheld the original ruling on April 5, 2021.

VI. Proceedings before the Inter-American Human Rights System

1. On May 10, 2021, Elena Maria Belafonte filed an individual petition before the Inter-American Commission on Human Rights (“the IACHR”), asserting that the Maldoba Municipality School System and, by extension, the Commonwealth of San Sebastián, had assumed international responsibility when it discriminated against her sexual orientation. In the petition, Ms. Belafonte asserts that the Commonwealth of San Sebastián was in direct violation of Articles 1, 11.2, 12.3, and 13.3 of the American Convention on Human Rights.
2. On May 22, 2021, the IACHR began processing the petition, forwarding the pertinent parts to the Commonwealth of San Sebastián and granting it the period of 45 days for the submission of its reply.
3. The Commonwealth of San Sebastián and the Maldoba Municipality School System filed its reply on June 3, 2021. In it, the state objected to the admissibility of the petition altogether, alleging that the petition simply sought out the IACHR as a fourth instance of appeal and that this was entirely an internal labor law question that did not have international bearing. The Diocese of San Sebastián also argued that a finding in favor of the petition by the court would create a situation that, in itself, would violate Articles 12.1 and 12.4, if the parish church was forced into a position of having to choose between the provision of underfunded, substandard education to its children (Article 12.4) or forcibly funding a school system that tolerated behavior in direct violation of their religious beliefs (Article 12.1)
4. In view of the State’s reply, the Inter-American Commission issued its report on admissibility and merits (Report 18/2021) on June 8, 2021. In the report, the IACHR declared the case admissible, and found potential violations of Articles 1, 11, and 12, but did not render a majority decision regarding Article 13. Only Article 11 was found to be in violation by all the reviewers. In that document, the IACHR asked the State to implement its recommendations. These recommendations included:
 - i. Amending the legal details of the Teach-Them-Together Initiative, making clear the limitations on the church or other benefactors with regard to

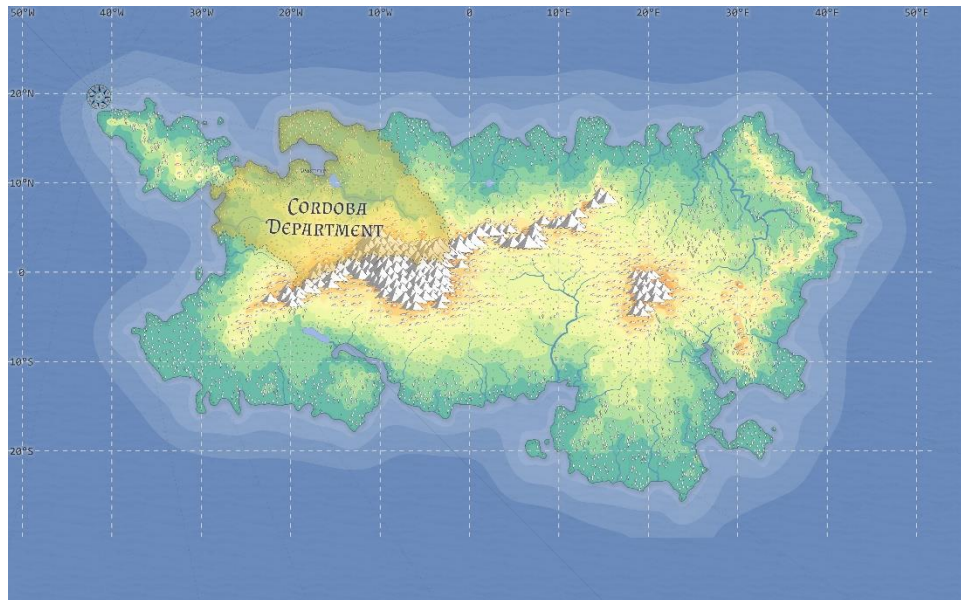
oversight of the school system's day-to-day operations, management, structural hierarchy, curriculum, and disciplinary codes and regulations.

- ii.** Either (a) reinstating Miss Belafonte at her previous position and at her previous rate of pay, with compensation for time lost while terminated, and placing her back on the “eligible for pension” list (eligibility not guaranteed until retirement) or (b) amending her file to reflect that she was terminated by the school administration without due cause and without misconduct or misgiving, and activating her annual pension immediately.
 - iii.** Strengthening the enforcement of the Equal Opportunity in Service Act, and expanding 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.
- 5.** Once the petition was deemed admissible by the Commission, the commonwealth then objected to the merits of the case—primarily that the firing was due to inappropriate/unprofessional conduct through a misuse of social media that placed both Miss Belafonte and the school system in a potentially damaging position and that it was this indiscretion, and not the actual fact of her orientation, that the school had deemed to be grounds for dismissal.
- 6.** Once the deadline and the requirements set forth in the American Convention and the Rules of Procedure of the Commission had been met, and because San Sebastián did not find it necessary to implement any of the recommendations made by the Commission, on October 15, 2021, the case was submitted to the Inter-American Court of Human Rights for adjudication. It alleged the violation of the same articles specified in the Commission's report on the merits.
- 7.** The Inter-American Court of Human Rights set the hearing date for November 4-7, 2021, during its Extraordinary Session in San Antonio, TX, to hear the arguments of the representatives of the petitioners and the Commonwealth regarding the merits and reparations in the instant case.

VII. San Sebastián Treaties and International Agreements

- 1.** San Sebastián is a member in good standing of the international community, but has recently been admonished by both Human Rights Watch and the United Nations Commission on Human Rights regarding continued systematic discrimination against homosexuals and transgendered persons, who are still ineligible to run for elected office, a ban which has been in effect since the constitution was revised in 1950.
- 2.** San Sebastián is a member in good standing of the Organization of American States and the United Nations, and holds seats on the Economic Commission for Latin America and the Caribbean (ECLAC) and is a participating member of the Central American Free Trade Association (CAFTA). San Sebastián became a member of the Pan American Union in 1903, and became a founding member of the OAS in 1945.
- 3.** San Sebastián has ratified several human rights and international humanitarian law treaties, 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.

VIII. Appendix: Map of San Sebastián



IX. Appendix: Pronunciation Guide

San Sebastián: san suh bas tee AHN

Maldoba: mahl DOH ba

Sor Juana: sore WAH nah

The Petitioner: ee LAY na – mah REE ah – bell uh FOHN tay