

## 2013 Inter-American Human Rights Motion Court Competition

Hypothetical case, by Victor Madrigal-Borloz, Principal Specialist at the Inter-American Commission on Human Rights (Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons) and Serrano Human Rights Specialist at the IACR Litigation Group,

4. The Elizabethan State considered itself safe from the brunt of the seventies, and eighties in the American hemisphere, and enjoys for respecting human rights. The Elizabethans pride themselves on being with a shared system of social values. The Constitution of 1993 guarantees freedom of religion and freedom of worship

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5. Elizabethan territory is divided, for administrative purposes, into six provinces: Santa Isabel, Santa Verónica, Santa María, Santa Marta, Santa Cruz, and Santa Rosa.
6. From a geographic, political, and economic perspective, the country is divided into three regions:
  - a. The northwest, comprised by the provinces of Santa Débora, Santa Rosa, and Santa Cruz, with an area of approximately 3000 km<sup>2</sup>.

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privileged access to the sea, meant that the economy was driven by trade during the colonial period and industry during the 19<sup>th</sup> and 20<sup>th</sup> centuries. The inhabitants of Santa Débora and Santa Isabel enjoy much higher levels of health, literacy, and social wellbeing than their compatriots to the south; the population is 75% urban and 25% rural;

- b. In the center of the country is the Great Diagonal Volcanic Mountain Range, which divides the northwestern and southeastern regions and comprises the province of Santa Verónica. The Great Mountain Range is an area with dramatic heights of great scenic beauty and few opportunities for mining or farming operations. In the middle of the only pass that allows for land contact between the northwest and the east is the plateau, at 3,000 meters above sea level, where the city of San Benito is located. It

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37. The bill was indeed submitted to Congress two weeks later, and three months after that, in a ceremony that Serafina attended as the guest of honor, the Gender Identity Act entered into force. Among other provisions, the Act establishes:

Article 9: All persons may request a name change and the correction of their sex on their vital records when their gender identity is inconsistent with such records. In the case of persons under 18 years of age, the principles of progressive capacity and best interests of the child as provided in the Convention on the Rights of the Child, American Convention on Human Rights, and the case law of the Supreme Court of El Salvador shall be considered.

Article 10: The correction of sex on vital records shall entail the change of the person's given name. The request for the correction of vital records shall include the selection of the new given name.

Article 11: The following are essential requirements for obtaining a name change and the correction of sex on vital records, and the person may provide any type of evidence to prove:

- The existence of a discrepancy between the originally recorded sex and the self-perceived gender identity of the applicant.
- The stability and constancy of this discrepancy.

Article 12: Once the correction of the vital records has been ordered, it shall be incumbent upon the Office of Vital Records of the respective province to issue a new birth certificate with a reference indicating the location of the certificate prior to its amendment.

Article 13: The original birth certificate that existed prior to the correction of the applicant's sex may be accessed only by persons demonstrating a legitimate interest, or in cases involving legal transactions in which the applicant's genetic sex invariably be considered.

Events subsequent to compliance with the recommendations of the IACHR Petition P-300-00

38. On January 13, 2007, Serafina was the first trans woman in El Salvador to obtain the recognition of her gender identity. In accordance with the Gender Identity Act, Serafina has appeared since then in the National Office of Vital Records of El Salvador as a person of the female sex for all

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elected President. In his inaugural address, Presidente de la Goblana del Atelo stated:

... As part of my term of office, I promise to before the Republic to defend the family, the essential core of our society, and marriage as the basis of the family. Do not misinterpret: we are not going to discriminate against any man or woman in our country, but let there be no doubt that we are not going to sacrifice the sacred institution of marriage to those who, out of ignorance or malice, would turn it into something it is not, and will never be.

40. That same day, the results of the public opinion poll the government's political agenda were published. They revealed that 59% of Elizabethians approved of the continued recognition of domestic partnerships between same-sex couples, but that 76% disapproved of its being considered equal to marriage.
41. That same year (2010), Serafina began a romantic relationship with Adriana Timor, a lesbian woman belonging to the old Deborine aristocracy, who possesses great wealth

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recorded in the file as follows:

- a. Adriana Timor was admitted to the public hospital three days earlier for a severe headache accompanied by blurry vision and the loss of movement of her left hand. From the time of her admission, Serafina, who accompanied Adriana, informed hospital personnel that her partner had suffered a ruptured congenital cerebral aneurysm during adolescence.
  - b. A few minutes after entering the hospital Adriana lost consciousness and was admitted, in a comatose state, to the intensive care unit. After being stabilized and undergoing 24-hour monitoring, the neurology specialist, Dr. Gepeto Vargas, who is also a close personal friend of the couple, informed Serafina that Adriana had indeed had a congenital cerebral aneurysm and that the internal hemorrhaging was now under control.
59. Dr. Vargas also informed Serafina that there were two options for dealing with the effects of the hemorrhage: the first was to perform intracranial surgery within one week at the most, for which the consent of a spouse or relative would be required. If this surgery is successful, there is a good prognosis in terms of the complete maintenance of the patient's faculties. It is a very high-risk operation—statistically, only 15% of patients survive. The second option, to continue monitoring the situation, is much less risky: it has an 85% survival rate, but it entails the near certainty that Adriana would experience—among other effects—the disorder known as anterograde amnesia.
60. Doctor Vargas informed Serafina that without informed consent for the surgery, the decision would have to be made by the Regional Medical Committee. Privately, Dr. Vargas added that in similar situations the Regional Medical Committee invariably takes the course that involves the least risk to the life of the patient.
61. Serafina told Dr. Vargas that she was perfectly aware of Adriana's opinion. Since Adriana had gone through the same situation in adolescence, she had told Serafina on more than two occasions that, if facing a similar situation, she would risk death over the alternative of living with anterograde amnesia.
62. Serafina further informed Dr. Vargas that Adriana's mother and father had died in a natural disaster in 2012,

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63. The next day Dr. Vargas again told Serafina that either she had to get a relative no matter how distant—to sign the consent form or the decision would be submitted to the Regional Medical Committee at the end of five days.
64. That same day Mariposa filed the request for provisional measures asking for the Court to require the Elizabethian State to allow Serafina to provide informed consent in Adriana's case. The Office of the President of the Inter-American Court issued a resolution on the same day, ordering that the parties make their arguments regarding this request at the public hearing scheduled in the contentious case.

November 21, 2012