



Dr Grégor Puppink
Director

Ms. Elizabeth Odio Benito
Judge, President of the Court
Inter-American Court of Human Rights
10th Av, between street 45 and street 47, Los
Yoses, San Pedro, San Jose, Costa Rica

Strasbourg, 5 February 2021

Subject: Suspicions concerning impartiality - Case 13.069

Ms. President of the Court,

On behalf of the *European Centre for Law and Justice* (ECLJ), I submitted to you an *amicus curiae* brief in the case *Manuela y otros vs. El Salvador* (Case 13.069). We take the liberty of asking you for clarifications concerning impartiality matters in this case.

The American Convention on Human Rights and the Statute of the Inter-American Court of Human Rights include guarantees of the independence and impartiality of the judges of the Court, which strengthen the authority of the Court and the credibility of its decisions.

According to Article 71 of the American Convention, “*The position of judge of the Court [...] is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.*” According to the Statute of the Inter-American Court, judges take an oath of independence and impartiality upon assuming office (Article 11 § 1) and their office is incompatible with any positions or activities “*that might affect their independence or impartiality*” (Article 18 § 1.c). In case of doubt as to such incompatibility, the Court decides about the judge and his or her activities or positions at issue (Article 18 § 2). The Court needs in this case to apply Article 19 § 1 of the Statute according to which “*Judges may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity.*”

Regarding impartiality, the European Court of Human Rights considers that “*it must be determined whether, irrespective of the judge’s personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect even appearances may be of a certain importance.*”ⁱ

Being aware of the essential character of the impartiality of judges, we would like to draw your attention to a few facts in the case *Manuela*.

One applicant is the *Center for Reproductive Rights*. This NGO received between 100,000 and 500,000 dollars from the *Open Society Foundations* (OSF) in 2018ⁱⁱ and the same amount in 2017.ⁱⁱⁱ It received more than 500,000 dollars from the OSF the years before.^{iv}

Many other *amici curiae* in this case are also financed by the OSF. Five universities intervening as third-parties have also programs financed by the OSF between 2016 and 2018: three programs of the [Yale University](#) (about 200,000 dollars), twelve programs of the [New York University](#) (about 2,200,000 dollars), six programs of the [City University of New York](#) (about 300,000 dollars), one program of the [University of British Columbia](#) (25,000 dollars) and eleven programs of [Georgetown University](#) (about 1,250,000 dollars). The third-party NGO *Women’s Link Worldwide* [received](#), between 2016 and 2018, 925,000 dollars from the OSF. Finally, two individual third-parties, [Dr. Joanne Csete](#) and [Joanna Erdman](#), were or still are members of some programs or committees of the OSF. Two other individual third-parties, [Deena R. Hurwitz](#) and Bert Lockwood,^v were advisor or counsellor of the ICJ. The eleven *amici curiae* financed by the OSF all support the applicants in this case.

According to your current official [curriculum vitae](#), you are a member of the *International Commission of Jurists* (ICJ). According to your 2014 official [curriculum vitae](#), you have also even been part of the Board of Directors of the ICJ. This situation creates an issue as the ICJ is financed by the OSF : this foundation [gave](#) about 1,330,000 dollars to the ICJ in 2018 and 1,255,000 dollars in 2017.

The OSF states that the link established with its beneficiaries is not only financial but aims to establish real “*alliances in pursuing crucial parts of the open society agenda*”,^{vi} therefore, one can legitimately consider that there is such alliance between the OSF and the ICJ.

Your current *curriculum vitae* also indicates that you accepted an award from the *Open Society Institute*. Your pride in receiving this award was [noticed by the press](#).

Therefore, if you sit as a judge in the case *Manuela*, your membership to the ICJ could create a situation of conflict of interest. The common financial and ideological dependence of your organization, the ICJ, and of both one applicant and eleven third-parties, would cast doubt on your ability to be impartial in this case. Sharing these facts and thoughts with you does not aim at questioning your personal integrity but at working together in favour of the impartiality of justice with its requirements related both to realities and appearances. This impartiality will serve the credibility and authority of the future decision in *Manuela* case.

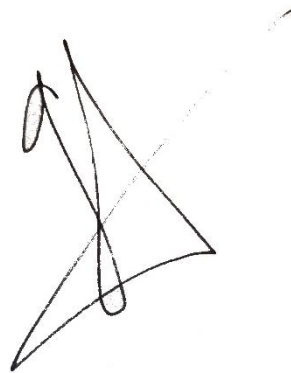
Furthermore, other more general questions on impartiality matters involve the influence on judges of both the *Open Society Justice Initiative* (OSJI), financed by the OSF, and all three applicants in the *Manuela* case. Indeed, the *Center for Reproductive Rights*,^{vii} *Colectiva de Mujeres para el*

Desarrollo Local^{viii} and *Agrupación Ciudadana por la Despenalización del Aborto Terapéutico, Ético y Eugenésico*^{ix} endorsed the “panel” convened by the OSJI. In the last years, this panel was organised in order to assess the candidates for the election of judges at the Court. How can the impartiality of judges be guaranteed, when their elections at the Court were supported by those same NGOs, through their participation in this process? This is the case for instance of Humberto Antonio Sierra Porto.^x

Those relationships between judges, the applicants and their supporting third-parties cast doubt on the impartiality of the Court.

I remain at your disposal for further information.

Sincerely yours,

A handwritten signature in black ink, consisting of several overlapping loops and lines, positioned to the right of the text 'Sincerely yours,'.

ⁱ European Court of Human Rights, *Castillo Algar v. Spain*, No 28194/95, 28 October 1998, § 45.

ⁱⁱ https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/2018_Annual.pdf, p. 22 (visited on 10/15/2020).

ⁱⁱⁱ <https://reproductiverights.org/sites/default/files/documents/2017-Annual-25.pdf>, p. 19 (visited on 10/15/2020).

^{iv} <https://reproductiverights.org/sites/default/files/documents/2017-Annual-25.pdf> https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AR_2016.pdf, p. 24 ; <https://reproductiverights.org/sites/default/files/documents/2015%20Annual%20Report%20Final%20PDF.pdf>, p. 26 (visited on 10/15/2020).

^v Voir ces deux liens : <https://law.uc.edu/faculty/directory/bert-b-lockwood.html>

<https://www.icj.org/the-new-south-africa-the-dawn-of-democracy/> (visited on 10/15/2020).

^{vi} https://www.opensocietyfoundations.org/uploads/2519658d-a95b-44bd-b9d3-edec9039de24/partners_20090720_0.pdf (visited on 01/02/2020).

^{vii} <https://www.justiceinitiative.org/newsroom/independent-experts-assess-candidates-inter-american-human-rights-commission> (visited on 02/05/2021).

^{viii} <https://www.justiceinitiative.org/newsroom/new-independent-panel-will-monitor-election-inter-american-human-rights-commissioners> (visited on 11/25/2020).

^{ix} *Ibid.*

^x <https://www.justiceinitiative.org/newsroom/independent-experts-call-transparent-review-inter-american-court-elections> (visited on 02/05/2021).