

OC - (ILA-14140) - JUDICIAL VOICE AND IMPARTIALITY. THE CONTRIBUTION OF INTERNATIONAL COURTS AND TRIBUNALS TO THE RESHAPING OF THE STANDARD OF JUDICIAL IMPARTIALITY.

Marina Fortuna (Netherlands)¹

1 - University of Groningen

Marina Fortuna

Marina Fortuna is currently a PhD researcher at the University of Groningen, under the supervision of Prof. Panos Merkouris. Her research focuses on interpretation of customary international law in the case law of International Courts and Tribunals. Marina obtained her LLB degree from Babes-Bolyai University and her LLM degree in Public International Law (Cum Laude) from the University of Groningen. In September 2018 she has been awarded the Avril McDonald Prize for young female scientists to pursue an academic career. Marina's first publication 'Environmental Protection as an Object & Tool of Evolutionary Interpretation', co-authored with Nina Mileva, is upcoming in September 2019 in the book edited by G. Abi-Saab, K. Keith, G. Marceau, C. Marquet 'Evolutionary Interpretation and International Law'. Marina's area of interest and research includes customary international law, interpretation, judicial impartiality and settlement of international disputes.

Abstract

This contribution discusses the recent jurisprudential developments on the standard of judicial impartiality in international courts and tribunals. It proceeds from a discussion of the recent disqualification and withdrawal decisions in the *Karadzic* and *Mladic* cases of the International Residual Mechanism for Criminal Tribunals and their significant contribution to reshaping the standard of judicial impartiality. These decisions have brought to the table a question recurrent in international investment law arbitration, but also in other branches of international law (and other courts and tribunals, such as the ICJ and the ICTR): *can adjudicators' expressed opinions on the subject matter of a case* (here, 'case' should be understood as referring both to the facts of the case and the law to be applied to the case) *lead to judicial disqualification?*

This is a controversial and difficult question. First, it is so because it brings back the ambiguous character of the concept of 'impartiality' itself – how impartial can a judge really be, considering that he does not take off his/her 'human skin' upon putting the black robe on. And second because, at least according to some authors, international judges are also advocates of change. Under this paradigm, adjudicators *need* to be able to express their opinions, within the 'normal' limitations of judicial freedom of speech, and any high standard of impartiality that would rob them of this opportunity will diminish their active judicial role.

It is against this background that this paper aims to answer the aforementioned question. Due to the limited character of this inquiry, this paper focuses on the case law of international courts and tribunals to answer the research question and does not focus on doctrinal works. The aim of this paper, however, is not only to answer the question of disqualification for expressed opinions, but also, based on case law analysis, to develop a framework of analysis for judges that would make it easier and more predictable to assess whether a particular situation where judges have expressed an opinion on the subject matter of a case warrants his or her removal from hearing the case.

Palavras-chave : impartiality, international judge, expressed opinions