SEM40. Separate opinions: The human and the humane in judicial discourse

11 September h. 11:00-13:00, Gorr 5

Convenors
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Abstract
Judicial reasoning provides fertile ground for exploring the possible human and humane dimensions of legal discourse, especially when attention is given to separate judicial opinions, which allow judges to voice individual perspectives (Goźdź-Roszkowski, 2020). These often diverge from the majority narrative, thus highlighting the human element of judicial deliberation: the values, empathy, and personal convictions that shape legal reasoning and, at least for the time being, seem to elude AI-generated interventions.

Separate opinions represent a form of specialized discourse that embodies the challenges of multilingual communication and cross-cultural understanding. Judges in international courts must navigate the complexities of drafting in non-native languages, most frequently in English. Separate opinions are also human artifacts where the precise language of the law intertwines with the need to reflect the voices, values, and intellectual struggles of their authors. For this reason, they feature rhetorical creativity, polyphony, dialogical argumentation (Garzone, 2016) as well as metadiscursive means such as hedging, boosters, etc. (McKeown, 2021).

This seminar invites proposals exploring the human and humane dimensions of separate judicial opinions as instances of specialized discourse and international communication, with emphasis on human rights discourse (Nikitina, 2025).

Topics may include:

- Empathy, ethics, and humane values
- Pragmatics (e.g., stance, evaluation, politeness)
- The rhetoric of dissent and the human voice
- Representations of sensitive topics (e.g., gender, race, and class) (Peruzzo, 2024)
- Creativity and metaphors in judicial discourse (El-Farahaty, Biel & Seracini, 2026, forthcoming)
- Dialogism and polyphony

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SEM40. Papers

11 September h. 11:00-13:00, Gorr 5

- *Voicing difference, building dialogue: A genre-analytic and metadiscourse study of judicial dissent in the ECtHR and U.S. Supreme Court* (Fabiola Notari, Università degli Studi di Modena and Reggio Emilia)

- *From concurring to dissenting views: The judges' 'self' in separate opinions* (Katia Peruzzo, Università degli Studi di Trieste)
- *Tears, trust and reason: The rhetoric of dissent in ECtHR separate opinions on gender-based violence against women* (Ilaria Giordano, Università di Torino)
- *Identity re-framed: Linguistic perspectives on binary transitions in ECtHR separate opinions* (Jekaterina Nikitina, Università degli Studi di Milano / Letizia Paglialunga, Università degli Studi di Milano)

SEM40. Abstracts

Tears, trust and reason: The rhetoric of dissent in ECtHR separate opinions on gender-based violence against women

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Although often perceived as carrying little authoritative influence, dissenting judicial opinions are nowadays increasingly regarded as pivotal aspects of legal reasoning: by giving judges the possibility to voice their own contrasting points of view, *voti separati* can indeed provide alternative legal interpretations that may become the prevailing view of a future Court (Goźdź-Roszkowski, 2020). However, legal doctrine does not mandate judges to take separate opinions into account, so dissenters must be strategic in their arguments and carefully select the words to maximise their influence on readers and to ensure a lasting impact on the evolution of judicial doctrine (Hinkle & Nelson, 2017). For this reason, I maintain that dissenting opinions embody a form of written persuasion that, although less visible than oral argumentation, plays an equally critical, if not even greater, role. In this light, a critical analysis of these texts through the lens of Aristotle's rhetorical principles, with particular attention to the three *pisteis – ethos, pathos* and *logos* (Rhet. I.2) – offers valuable insights into their persuasive strategies and discursive construction. To achieve this objective, this study undertakes a qualitative textual analysis of a 33,000-word corpus comprising dissenting opinions related to cases of gender-based violence submitted to the European Court of Human Rights between 2012 and 2024, examining the pre- and post-ratification phases of the Istanbul Convention – a critical EU-level instrument aimed at eradicating male violence against women. Through a detailed qualitative rhetorical analysis of the texts, this study seeks to uncover instances of the three Aristotelian proofs that shape the structure and delivery of the arguments. Findings derived from this analysis will not only reveal the presence of specific linguistic items and implicit rhetorical strategies sculpting the transmission of the message, but they will also illustrate how the words of judges, investigated through the lens of Appraisal Theory (Martin & White, 2003), trigger emotional responses to persuade audiences or manipulate narratives in cases of alleged human rights violations involving domestic and sexual violence against women.

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Identity re-framed: Linguistic perspectives on binary transitions in ECtHR separate opinions

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Far from being neutral, the legal framing of identity can determine whose gender is recognised, how, and under what conditions. This study examines how the European Court of Human Rights (ECtHR) constructs gender identity in its case-law, with a particular focus on the role of separate opinions in shaping and challenging legal understandings of gender.

Recognising separate opinions as a distinct judicial genre (Nikitina, 2025: 201–203), we analyse them as independent and often dissenting interpretative spaces where judicial reasoning becomes more explicit, ideological tensions surface, and alternative framings of gender identities may emerge.

Using corpus-assisted discourse analysis (Gillings et al., 2023) and framing theory (Entman, 1993), we observed 53 ECtHR judgments and separate opinions concerning Female-to-Male (F-to-M) and Male-to-Female (M-to-F) transitions of gender identity. In this study, separate opinions played a crucial role in revealing the interpretative divergences that are not always visible in judgments. They surface ideological stances behind legal recognition and constructions of gender, exposing how competing views on identity, embodiment, and recognition coexist within the ECtHR's institutional discourse. In more recent cases, our findings have shown how dissenting and/or concurring opinions increasingly adopt framings of gender that may align with contemporary notions of identity as a becoming (Córdoba, 2022), challenging medicalised and bureaucratic constraints.

Furthermore, findings suggested that while majority judgments often reproduce dominant legal and biomedical narratives – framing F-to-M transitions as psychological and M-to-F transitions as surgical or physical – separate opinions frequently depart from these scripts. They can provide a space for contesting essentialist and biologically determined framings and for articulating more dynamic understandings of gender identity, sometimes anticipating broader discursive shifts. Ultimately, our findings suggest that – just like identity – its legal framing in ECtHR discourse is neither neutral nor static. It often reflects and reinforces broader cultural and institutional biases. Yet, it is through separate opinions that some of the most forward-looking framings emerge, signaling a gradual but meaningful transformation in how gender identity is understood and potentially reimagined within European human rights law.

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Voicing difference, building dialogue: A genre-analytic and metadiscourse study of judicial dissent in the ECtHR and U.S. Supreme Court

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Separate judicial opinions provide judges with a unique discursive space to express alternative legal reasoning, revealing individual perspectives that add a distinctly human dimension to the typically collective judicial voice (Garzone, 2016; Etxabe, 2022). This study compares dissenting opinions from the European Court of Human Rights (ECtHR) and the U.S. Supreme Court, focusing on how judges rhetorically negotiate individuality (highlighting their personal stance and authority) and commonality (maintaining institutional coherence and respect). Specifically, it examines how dissenting judges strategically calibrate "proximity" (establishing closeness and engagement with readers) and "positioning" (clearly signalling personal judgements and commitments) through metadiscursive features as conceptualised by Hyland (2005, 2015). Employing a mixed-method approach, this analysis enriches the genre-based rhetorical-move framework proposed by Goźdź-Roszkowski (2020) by adding two moves identified through careful textual annotation: the 'Significance move' (clarifying the broader implications of dissent) and the 'Justification move' (providing an explicit rationale for dissent). Corpus-linguistic methods facilitated the quantitative identification and subsequent qualitative validation of interactive markers (e.g., transitions, evidentials) and interactional resources (e.g., hedges, boosters, self-mentions). Findings show that ECtHR dissenters frequently utilise proximity-enhancing devices – particularly engagement markers and interactive metadiscourse – to foster an empathetic stance (pathos) and reinforce institutional credibility (ethos), balancing collective identity with clearly articulated divergence. Conversely, dissenting opinions from the U.S. Supreme Court predominantly employ assertive interactional resources, especially boosters and self-mentions, to foreground individual judicial authority (ethos) and logical coherence (logos), highlighting a more individualistic and assertive rhetorical stance. By refining and expanding existing rhetorical move taxonomies, this study seeks to enhance a context-sensitive understanding of judicial dissent as an interculturally dynamic genre. Ultimately, these subtle yet meaningful rhetorical peculiarities across diverse judicial traditions and individual voices 'pave the way' for richer debates on judicial transparency, institutional legitimacy, and the dialogic character of human-rights adjudication.

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From concurring to dissenting views: The judges' 'self' in separate opinions
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The European Court of Human Rights (ECtHR) does not require unanimity for a verdict to be reached, and ECtHR judges participating in the consideration of a case may annex separate opinions (as well as statements of dissent) to the relevant judgment. Although judgments and separate opinions are published together as a single document, the latter are deemed to constitute a distinct judicial genre (Nikitina, 2025: 201–203), in terms of both content and style. The body of judgments reflects the majority opinion, which constitutes the Court's ruling, and is drafted by judge rapporteurs assisted by the Registry, following a "prefabricated structure, divided into sections and subsections" (Peruzzo, 2019: 60) and using recurrent, standardised formulas (Peruzzo, 2019: 60–68). Separate opinions, on the other hand, represent the minority view(s) of one judge or a small group of judges and have no bearing on the Court's decision. Being distinct from the judgment they are annexed to, they allow judges a much more unconstrained and even subjective expression of their arguments and points of view.

By means of a corpus-assisted approach, this paper aims to investigate how the judges' 'self' emerges in separate opinions accompanying a corpus of ECtHR judgments collected using the gender identity labels forming the LGBTIQ+ initialism as keywords (lesbian, gay, bisexual, transgender, intersex and queer). Given that gender identity, gender recognition and sexual orientation are generally seen as sensitive topics, the occurrence of such labels in the so-collected judgments was deemed as an indicator of the possible need for the judges to express diverging – although not necessarily opposite – views. The selection criterion allowed for the collection of 136 separate opinions, which can be placed on a continuum from concurring to dissenting opinions. The aim of the paper is thus to explore how the judges drafting separate opinions verbally manifest themselves in the texts, i.e. how they express their stance and views – in a more or less overt fashion – on the majority opinion. The study thus examines the judges' use of personal pronouns – which are unsurprisingly much more frequent than in majority opinions – in combination with language expressing evaluation (as defined by Thompson and Hunston, 2000: 5). This may reveal beliefs and values which can go beyond the boundaries of their personal system of beliefs, as they may be shared by the professional community and influenced by the socio-cultural context they belong to.

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