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Gender-based violence against women in the European Court of Human Rights: intertextuality in dissenting opinions

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Abstract: Far from being neutral and objective, the law often perpetuates existing prejudices – particularly gender stereotypes – which hinder equality and human rights. Despite recent efforts by bodies like the European Court of Human Rights (ECtHR) to condemn discriminatory legal language, such stereotypes persist, especially in contexts where domestic violence against women is still widespread and rooted in cultural norms: these narratives trivialise victims' experiences and weaken legal protections, sustaining cycles of silence and fear. Against this backdrop, we examine cases of gender-based violence presented to the ECtHR from 2012 to 2024, and we specifically focus on separate opinions, which contest majority understandings of discriminatory or abusive acts and reveal competing judicial narratives. Following Ädel and Garretson's (2006) taxonomy, we begin by analysing intertextuality to trace how judges cite, attribute or mention external and internal sources: this focus will reveal how dissenting voices engage with, resist or reinterpret dominant

legal discourses, therefore exposing the systemic nature of injustice, or, conversely, reproducing harmful narratives. On this basis, we then move to the examination of a number of harmful discursive practices, i.e., argumentative or rhetorical choices that ideologically frame cases and contribute to the reproduction of gender-based violence. This qualitative analysis situates our findings within the framework of Feminist Critical Discourse Analysis (Lazar, 2005), which explores how discourse sustains or challenges hierarchies of gendered power.

Keywords: gender-based violence, separate judicial opinions, European Court of Human Rights, intertextuality, harmful discursive practices, critical discourse analysis

Abstract: Lungi dall'essere neutro e oggettivo, il diritto perpetua spesso pregiudizi radicati – in particolare stereotipi di genere – che ostacolano l'uguaglianza e i diritti umani. Nonostante i recenti sforzi di organismi come la Corte Europea dei Diritti Umani (Corte EDU) volti a condannare il linguaggio giuridico discriminatorio, tali stereotipi persistono, soprattutto in contesti in cui la violenza domestica contro le donne rimane diffusa e radicata in norme culturali consolidate. queste narrazioni tendono a banalizzare le esperienze delle vittime e a indebolire le tutele legali, perpetuando cicli di silenzio e paura. Alla luce di ciò, il presente contributo esaminaalcuni casi di violenza di genere sottoposti alla Corte EDU tra il 2012 e il 2024, concentrandoci specificamente sulle opinioni separate che contestano le interpretazioni maggioritarie di atti discriminatori o abusivi e che portano alla luce narrazioni giudiziarie contrapposte. Seguendo la tassonomia proposta da Ädel e Garretson (2006), analizziamo innanzitutto l'intertestualità per tracciare le modalità con cui i giudici citano, attribuiscono o richiamano fonti esterne e interne: tale analisi rivela come le voci dissenzienti si confrontino con i discorsi giuridici dominanti, li contestino o li reinterpretino, esponendo così la natura sistemica dell'ingiustizia oppure, al contrario, riproducendo narrazioni dannose. Su questa base, procediamo poi all'esame di alcune pratiche discorsive lesive, ossia scelte argomentative o retoriche che inquadrano ideologicamente i casi e contribuiscono alla riproduzione della violenza di genere. L'analisi qualitativa colloca i risultati all'interno del quadro teorico della Feminist Critical Discourse Analysis (Lazar, 2005), che indaga come il discorso sostenga o metta in discussione le gerarchie di potere fondate sul genere.

Parole chiave: violenza di genere, opinioni giudiziarie separate, Corte europea dei diritti dell'uomo, intertestualità, pratiche discorsive dannose, analisi critica del discorso

1. Introduction[1]

The view that language is not merely a tool for describing reality, but rather a means of constructing it (Berger & Luckmann, 1966) highlights its crucial role in shaping social categories, legitimising power relations, and influencing our perceptions (Fairclough, 1995). In judicial contexts, the linguistic portrayal of gender is particularly significant: how women are represented, especially in gender-based violence cases, affects perceptions of their credibility, agency and victimhood (Ehrlich, 2001). Entrenched – yet persistent – stereotypes about women as emotional, unreliable, or provocative, often subtly surface in judicial discourse: they appear both in oral and written courtroom/judicial genres, through lexical choices, grammatical structures and patterns of agency attribution (Fairclough, 1995; Lazar, 2005). This paper explores dissenting opinions in European Court of Human Rights (ECtHR) cases concerning gender-based violence and with two main objectives: 1. identifying frequently used linguistic and discursive strategies, typical of the genre and the issue at stake, 2. determining the extent to which these strategies contribute to the reiteration of discriminatory practices, when the dissenting opinion contrasts rulings favourable to women who have experienced violence. With Feminist Critical Discourse Analysis (FCDA) as the overarching theoretical approach and qualitative text analysis as the method, the study examines the way linguistic choices influence how victims of gender-based violence are represented, how stereotypical representations are reinforced or resisted, and how this shapes legal outcomes and societal understandings of gender and human rights.

[1] This research was conducted within the project JUSTEqual – *Eradicating Judicial Stereotypes and Gender Discriminatory Language. Equal Access to Justice for Women in Cases of Gender-Based Violence*, funded by the Department of Law of the University of Turin under the "Dipartimento di Eccellenza" programme of the Italian Ministry of University and Research, coordinated by Prof. Joëlle Long. Further information on the project's objectives, activities, and research team is available at: https://hubtolaw.it/projects/justequal-eradicating-judicial-stereotypes-and-gender-discriminatory-language-equal-access-to-justice-for-women-in-cases-of-gender-based-violence/.

The following sections provide a brief literature review on linguistic approaches to gender-based violence in judicial contexts, followed by a focus on dissenting opinions in Section 2.1. Section 3 outlines the data collection stage as well as the theoretical and methodological background. The analysis is presented in Section 4, while Section 5 offers a discussion of the findings and concluding remarks.

2. Background and contextualisation

A seminal work examining the extent to which linguistic and discursive practices affect perceptions of gender-based violence and its victims in judicial contexts is Susan Ehrlich's (2001) examination of rape trials and the language of consent. Her work shows how specific language choices can weaken women's credibility, exposing the power of discourse in framing both legal outcomes and public perceptions of victims. Building on this issue, Cotterill (2003) addresses the definition and interpretation of domestic violence through the examination of a high-profile trial: the O.J. Simpson case. Her work reveals how both the defence and the prosecution strategically frame their arguments, moulding the discourse around gender-based violence to fit their respective narratives. Around the same time, Wodak (2005) shifts the lens to policymaking, highlighting EU's adoption of gender mainstreaming as a strategy for integrating gender equality into all aspects of policy development. She emphasises the value of interdisciplinary approaches to the study of political and legal discourses, stressing the need to draw on multiple fields to gain a comprehensive understanding of how gender is constructed and contested in institutional settings.

More recently, the focus on the role of linguistic and discursive practices in shaping perceptions of gender-based violence has also started to gain attention in legal academic research. Notable contributions include the studies by Borrello (2022) and Benevieri (2022), which examine from the perspective of legal professionals how social asymmetries and discriminatory practices are reproduced in

courtroom discourse. As Benevieri (2022, p. 60) notes, asymmetries and discrimination that exist in society resonate in courtrooms "through strategies and acts of linguistic micropower". These dynamics, as Borrello (2022, pp. 358-359) illustrates, commonly appear in the form of victim blaming, a rhetorical strategy that redistributes blame to the victim, and epistemic injustice, which undermines and marginalises the credibility of women's testimony. Taken together, these practices contribute to secondary victimisation, in which victims suffer additional harm within the judicial process itself.

2.1 Judicial dissent: voices of divergence

Dissenting opinions are formal written statements that represent "the views of a single judge or a group of similar-minded judges that diverge from the majority opinion" (Nikitina, 2025, p. 195). These are regarded as crucial for judicial independence, integrity and transparency (Goździ-Roszkowski, 2020, p. 398; Dunoff & Pollack, 2023, p. 2). Indeed, by making the alternative viewpoints visible to the public, they allow for greater scrutiny of the Court's reasoning and foster a better understanding of the complexities of legal issues. They also safeguard judges' freedom to express dissent, ensuring that decisions result from diverse perspectives and are devoid of any "improper external influence on the disposition of a case" (Dunoff & Pollack, 2023, p. 2). Beyond these functions, dissents also have powerful long-term implications: as Hinkle and Nelson (2017, p. 1) argue, they can lay the groundwork for future legal challenges, influence the direction of case law and even prompt doctrinal shifts. By highlighting faults in existing laws or interpretations, they offer alternative frameworks that may become useful points of reference for future verdicts. In this light, dissenting judges need to carefully craft their language to maximise the persuasiveness and enduring influence of their views.

Dissenting opinions have been a constituting feature of the ECtHR since its foundation (Pinto de Albuquerque & Cardamone, 2019, p. 148; Nikitina, 2025, p. 196). Set up in 1959 to address violations of the 1950 European Convention on Human Rights

(Bruinsma, 2007, p. 7), the ECtHR stands out as the oldest regional human rights court providing international remedies for rights violations within member states (Nikitina, 2025, p. 15). It operates as a full-time court with jurisdiction over 46 Council of Europe member states: in almost 50 years, it has developed the largest case law of any international court, with more than 10,000 pronounced judgments (Pontrandolfo, 2011, p. 214). Its judges, one per member state, are elected by the Parliamentary Assembly for a nine-year mandate. Given their varied legal and cultural backgrounds, they contribute with a range of perspectives to legal interpretation, making the study of dissenting opinions particularly fruitful. From a judicial point of view, dissents reveal the intricacies of judicial reasoning, the interplay of different legal traditions and the evolution of jurisprudence. From a linguistic perspective, instead, they highlight how language reflects the cultural and personal perspectives of the judges, which, in turn, shed light onto unique rhetorical strategies and discursive techniques employed for the transmission of the message. This is especially relevant in cases involving male violence against women, as the ECtHR has recently adopted an 'anti-stereotyping approach' targeted at dismantling entrenched discrimination that hinders access to human rights (Renzulli, 2023, p. 156).

Against this backdrop, CDA provides a valuable framework for examining these patterns, as it foregrounds the ideological role of language and its capacity to maintain or challenge unequal power relations (van Dijk, 1993; Wodak, 2005). Similarly, feminist approaches to discourse analysis highlight how gender ideologies become embedded in institutional talk, often invisibly (Lazar, 2005). This concern is also echoed in forensic linguistics, where researchers have demonstrated how linguistic practices in legal settings can systematically disadvantage women. Specifically, women's testimonies are frequently discredited when they deviate from normative expectations of coherence, calmness, or rationality (Cotterill, 2003).

2.2 The concept of intertextuality

Anticipating our answer to the first research question (see §1), in the dataset considered for this analysis, judges appeared to rely heavily on intertextuality. The concept of intertextuality posits that any text "is constructed as a mosaic of quotations and is the absorption and transformation of another text" (Kristeva, 1967, p. 3). This means that no written discourse exists alone – instead, it is an interwoven web of other text's excerpts. In scholarly terms (Hyland, 1999, p. 432; Hyland & Jiang, 2017, p. 1), intertextuality is the strategy of attributing content to another source, thus integrating claims into accredited knowledge. Crucially, this act of referencing does not merely constitute a formality, but functions as a strategic mechanism to validate authors' *ethos*: it strengthens the persuasive power of the argument by situating the claim within a larger and established framework while simultaneously projecting their voice into the disciplinary community they belong to (Hyland, 2012, p. 27). As concerns legal argumentation, intertextuality represents a constituting element of the discipline (Peruzzo, 2017): indeed, when issuing judgments, judges do not operate in a vacuum but must consider the existing body of law including statutes, preceding cases and established principles. This is particularly true for dissenting opinions, where judges use intertextual references to legitimise a point of view which openly contrasts the one of the majority. Furthermore, since, as Swales (2014, p. 120) argues, the choice of authorities to cite and the way in which they are cited are "imbued with private intentions", these practices require deeper investigations as they not only function as rhetorical devices shaping discourse and constructing knowledge related to male violence against women, but also as tools that operate rhetorically to bring to the fore the author's individual authority.

3. Materials and methods

3.1 Data collection

The present study undertakes a textual and contextual analysis inspired by the principles and methodologies of FCDA. The dataset under investigation is a small, specialised dataset of around 33,000 tokens, comprising 12 judgements and 14 dissenting opinions, specifically compiled for the purposes of this research. Separate opinions were manually extracted from the freely accessible HUDOC database, which contains full texts of legal documents related to the ECtHR. The compilation of the database involved using the following search parameters in HUDOC: the time frame was set to 2012–2024, language was restricted to English only, and the following keywords were entered in the database search fields: "domestic violence", "sexual violence", "sexual assault", "rape", "sexual abuse" and "feminicide". Finally, the present analysis does not take into consideration the 'concurring' type of separate opinions and only encompasses 'dissenting' and 'partly dissenting' texts, as we wanted to analyse instances that exhibit a clear divide with the majority's line of reasoning. For a detailed list of the cases included, please refer to Table 1.

Case	type of D.O.	case	year
BLJAKAJ AND OTHERS V. CROATIA	Partly dissenting	Murder of woman in professional role	2014
J.I. v. CROATIA - Wojtyczek	Partly dissenting	Sexual violence	2022
J.I. v. CROATIA - Derencinovic	Partly dissenting	Sexual violence	2022
J. L. V ITALY	Dissenting	Sexual violence	2021
KURT v. AUSTRIA	Dissenting	Domestic violence	2017
M. AND M. v. CROATIA	Partly dissenting	Domestic violence	2015
MALAGIĆ v. CROATIA	Dissenting	Domestic violence	2022
TALPIS v. ITALY - Eicke	Partly dissenting (1)	Domestic violence	2017
TALPIS v. ITALY - Spano	Partly dissenting (1)	Domestic violence	2017
VALIULIENĖ v. LITHUANIA	Dissenting	Domestic violence	2013
VIERU v. THE REPUBLIC OF MOLDOVA	Partly dissenting	Domestic violence	2024
VOLODINA v. RUSSIA	Partly dissenting	Domestic violence	2019
VRONCHENKO v. ESTONIA	Dissenting (joint)	Sexual violence	2013
Y. v. SLOVENIA	Partly dissenting	Sexual violence	2015

Table 1. Texts comprised in the dataset.

3.2 Analytical framework

The study adopts a qualitative approach which involves a comprehensive close reading of the texts. The analysis, composed of four steps, started with a meticulous reading and manual examination of the texts which revealed the importance of intertextual references that formed the focus of the first stage. The intertextual references were tagged throughout the dataset and later, drawing on the taxonomies developed by Ädel and Garretson (2006), each item was classified into citations, attributions and mentions. Here their frequency was also documented. In this framework, citations correspond to what Swales (1990, p. 148) calls "non-integral references" – direct quotations or paraphrases, appearing in parentheses or footnotes, that acknowledge the source without including it into the sentence. Attributions, then, correspond to the "integral references" (Swales 1990, p. 148), where the author's name appears as part of the sentence itself, typically in subject or object position. Finally, mentions refer to cases where a writer acknowledges the existence of sources or alludes to their work without providing specific quotations, paraphrases, or detailed engagement with their arguments. In the third phase, the linguistic co-text surrounding each intertextual reference was analysed to uncover the rhetorical and discursive strategies implicitly or explicitly coded in this specific context of language use: particular attention was given to the type and frequency of referents, their rhetorical-discursive functions and their lexico-grammatical construction. In the end, the final phase of the study concentrated on the identification and analysis of judicial gender-based stereotypes. Building on the previously identified patterns, the analysis was expanded to encompass the broader linguistic and discursive co-text surrounding these instances: the aim was to detect and interpret the subtle or overt practices through which such harmful stereotypes are reproduced and sustained.

4. Analysis

In this section we discuss the use of intertextuality, as per the use made within the dissenting opinions of our dataset. Later, we explore how these linguistic choices contribute to harmful practices that undermine efforts to eradicate gender-based violence.

4.1 Intertextuality

Drawing on Ädel and Garretson (2006), we systematically classified all instances of intertextuality. As displayed in Table 2, *citation* emerged as the most frequently occurring type, with 150 instances, followed by *attribution* with 69, and *mention* with 57.

Dissenting Opinion	Citation	Attribution	Mention
BLJAKAJ AND OTHERS V. CROATIA	15 (**10.0%**)	4 (**5.8%**)	3 (**5.3%**)
J.I. v. CROATIA – Wojtyczek	2 (**1.3%**)	1 (**1.4%**)	1 (**1.8%**)
J.I. v. CROATIA – Derencinovic	12 (**8.0%**)	3 (**4.3%**)	5 (**8.8%**)
J.L. v. ITALY	8 (**5.3%**)	2 (**2.9%**)	3 (**5.3%**)
KURT v. AUSTRIA	24 (**16.0%**)	4 (**5.8%**)	7 (**12.3%**)
M. AND M. v. CROATIA	6 (**4.0%**)	4 (**5.8%**)	1 (**1.8%**)
MALAGIĆ v. CROATIA	5 (**3.3%**)	7 (**10.1%**)	3 (**5.3%**)
TALPIS v. ITALY – Eicke	25 (**16.7%**)	11 (**15.9%**)	6 (**10.5%**)
TALPIS v. ITALY – Spano	10 (**6.7%**)	13 (**18.8%**)	8 (**14.0%**)
VALIULIENĖ v. LITHUANIA	11 (**7.3%**)	8 (**11.6%**)	4 (**7.0%**)
VIERU v. THE REPUBLIC OF MOLDOVA	9 (**6.0%**)	3 (**4.3%**)	4 (**7.0%**)
VOLODINA v. RUSSIA	5 (**3.3%**)	1 (**1.4%**)	1 (**1.8%**)
VRONCHENKO v. ESTONIA	3 (**2.0%**)	2 (**2.9%**)	6 (**10.5%**)
Y. v. SLOVENIA	15 (**10.0%**)	6 (**8.7%**)	5 (**8.8%**)
Total	**150**	**69**	**57**

Table 2. Categorisation of intertextual references together with related frequencies and percentages of occurrence.

4.1.1 Citation

Citation, as illustrated by Ädel and Garretson (2006), indicates a reference to a source when neither the author nor the work is syntactically integrated into the surrounding text. Among the extracted sentences, we identified two subtypes of citations: what we called *quoting* (1), where the judge provides a direct citation of the source, typically demarcated by inverted commas, and the *indirect* (2) type, where the documents are simply mentioned in parentheses as examples of similar procedures.

1) *In its innovatory judgment in the case of M.C. v Bulgaria the Court stated that in the circumstances of that case its task was limited "to examin[ing] whether or not the impugned legislation and practice and their application in the case at hand, combined with the alleged shortcomings in the investigation, had such significant flaws* [...]*"* (Y v. SLOVENIA)

2) *The Government's positive obligations in countering domestic violence are not restricted to an effective investigation. (see Volodina v. Russia, no. 41261/17, § 86, 9 July 2019, with further references).* (J.I. v. CROATIA).

The dissenting judges in our sample draw from a notably broad intertextual repertoire. Beyond the immediate majority opinion and related case file, they also refer to previous dissenting opinions, legal precedents (both supportive and oppositional) and texts such as the US Constitution. Additionally, they also reference institutional reports from GREVIO, WHO, and EIGE, and international legal frameworks such as the CEDAW General Recommendation (1992) and the Istanbul Convention (2011). In one case, a dissenting opinion draws from literary work. In particular, it refers to a Shakespearean play, thereby suggesting that dissents are not only legal arguments, but also rhetorical performances shaped by broader cultural narratives. However, this technique is not ideologically neutral. Judges' selective citation of precedents shows a deliberate intertextual alignment with legal sources

that either conceptualise gender-based violence as a structural issue, or, conversely, that further undermine the credibility of victims.

From a syntactic perspective, citations in our corpus are predominantly placed in rhematic position, namely, at the end of the clause, where new or focal information is typically introduced (Halliday & Matthiessen, 2004: 64). This placement is far from incidental: it heightens the discursive salience of the citation, presenting it as the culmination of a legal or moral argument.

Almost uniformly, these citations are introduced by the particle *see*, a stylistic choice that serves multiple discursive functions. Firstly, it directs the reader towards the source, implicitly encouraging alignment with the cited documents. Unlike more assertive reporting verbs such as *argue*, *claim*, or *state*, *see* positions the cited material as self-evident, authoritative and requiring no further elaboration. It does not add to the argument but serves as a strategic gesture of epistemic alignment. Additionally, it also introduces what Fairclough (1992) terms "manifest intertextuality": the explicit incorporation of external voices into the text without overt commentary. In addition to being part of an established and crystallised pattern in judicial prose, i.e. it belongs to legal phraseology (Peruzzo, 2017; Trabulsi, Yagi, Ssaydeh, 2021), in the context of gender-based violence, this technique aligns the dissenting opinion with a broader legal and moral consensus, deflecting potential criticisms of subjectivity or bias.

Overall, citations are the most frequently used type of intertextual references in our dataset, accounting for 54.3% of all occurrences, indicating judges' strong reliance on external authority.

4.1.2 Attribution

Attribution, or 'integral references' (Swales, 1990, p. 148), refers to the process of assigning a linguistic or cognitive action to its source within a sentence. Examples in our data illustrate two subtypes: what we identify as *personal* (3), which links an idea or action to an individual, reflecting their views or contributions, and *institutional* (4), whose

function is to attribute statements or findings to an institution or collective entity.

3) *Judge Eicke argues in his partly concurring, partly dissenting opinion, that there seems to be no obvious reason why any short-term preventative intervention by the police authorities [...] would have been inconsistent with his rights either under Article 5 or Article 8 of the Convention.* (TALPIS v. ITALY).

4) *The Florence Court of Appeal deemed it essential to establish certain factual elements belonging to a broader context, encompassing events that preceded or followed the acts at issue, as retained in the charges* (J.L. v. ITALY)

Here, references mainly target other judges (*personal* subtype) or legal documents and governmental bodies such as the EU (*institutional* subtype). Syntactically speaking, these instances are predominantly placed in thematic position – namely, at the beginning of the clause (Halliday & Matthiessen 2004: 64): this is particularly relevant here, as it foregrounds the source of authority and establishes the interpretive framework for the reader. In this way, *attribution* is not a mere formal acknowledgment of another speaker/document, but as a strategic alignment with an authority, which, in turn, enhances the persuasive force of the dissent. Furthermore, these references also appear to be employed by the judges to convey evaluation or judgment – either positive or negative: they target the majority's opinion, the procedural conduct or the institutional actors involved. Evaluative modifiers, including adjectives like *necessary*, adverbs like *rightly*, or evaluative phrases such as *landmark judgmen*t, are typically employed to realise such type of intertextual reference. In the context of gender-based violence, these evaluative attributions assume particular significance since they have the power of highlighting critical failures in the protection of victims, biases that permeate investigative processes, and systemic minimisations of violence.

On the whole, attributions account for 25% of all intertextual references - the second most frequent among the different types of references, indicating their strategic importance in dissenting opinions

as mechanisms for both establishing judicial authority and signalling evaluative stances toward institutional actors and legal reasoning in cases of gender-based violence

4.1.3 Mention

The third type of intertextual reference is mention, which occurs when a writer references an author, idea or publication without a specific contextualisation to the case in point but rather as a more general pointer to the ideas presented. Within our corpus, we extracted three distinct subtypes of mention: *comparative*, *internal*, and *aligning*. The first subtype (5) is used to compare different cases or legal principles to highlight discrepancies, emphasise similarities or criticise the inconsistency of legal interpretations. The second (6) is employed to refer to the case in a general way, without elaborating on its specific details or arguments. Finally, the third subtype (7) is used by the judge to indicate their alignment to a previous case or judgment. A detailed analysis of the context in which the mention is found is necessary to establish to which subtype the item belongs.

5) *Failure to investigate domestic violence is often coupled with a failure to protect the victim (compare A v. Croatia)* (J.I. v. CROATIA).

6) *To our regret we cannot follow the majority's reasoning concerning Article 3 of the Convention*. (M. and M. v. CROATIA).

7) *Bljakaj and Others v. Croatia presents a similar stark contrast and demonstrates the required extent of immediacy*. (TALPIS v. ITALY).

Comparative mentions generally draw connections with other judicial cases to highlight similarities, differences or inconsistencies in legal reasoning. *Internal* mentions, in this specific context, work as forms of discursive resistance, calling attention to judicial reasoning that downplays harm, ignores patterns of control or implicitly questions

the credibility of victims. Finally, *aligning* mentions quote national or international legal authorities to signal agreement with broader human rights frameworks. These items, flexibly positioned at the beginning or end of the sentences, act as references that are not used as part of the core argument but work to acknowledge a source not integrated into the main argument (Breeze, 2014): they therefore constitute powerful rhetorical tools that enable judges to strengthen their ethos – appearing informed, ethically grounded and in line with established norms. This aspect gains particular significance in dissenting opinions on male violence against women, where challenging prevailing interpretations can be perceived as biased or ideologically driven.

In sum, mentions account for 20.6% of all intertextual references. Although the least frequent in use, this type of intertextual reference function as flexible rhetorical devices that allow dissenting judges to situate their arguments within broader legal landscapes without requiring detailed engagement, while simultaneously constructing an ethos of judicial competence and alignment with human rights principles.

4.2 Harmful discursive practices

With the term 'harmful linguistic-discursive practices' we refer to argumentative, lexical or rhetorical choices which contribute to framing the case within a given ideology or predetermined views of how events should have unfolded, and which contribute to the reiteration of gender-based violence in cases of domestic and sexual violence. Generally speaking, we can attribute harmful practices to those judges whose dissenting opinion steers away from supporting the woman who has experienced violence.

While examining the discursive and a stylistic construction of the dissenting opinion, it became evident that intertextual segments and the conceptual meaning they produce in their immediate co-texts are used, regardless of the judge's intention or awareness, as tools to reproduce these practices. Thus, the link between the use of intertextual references and the reiteration of discriminatory practices emerges primarily at the

level of meaning, where the presence of these items reveals an underlying ideological assumption concerning victims, perpetrators and more generally what violence is supposed to be.

In our dataset, we have identified four macro categories of such practices: (a) victim blaming, (b) prioritisation of defence rights over victim protection, (c) minimisation of trauma and (d) delegitimisation of prior court decisions.

Victim blaming (a) consists in framing the discussion around a shift of responsibility from the perpetrator to the victim for their own fate. For instance, in JI v. CROATIA, the judge accuses the victim of failing to provide sufficient details about her assault when reporting it to the police (see 8). This, in turn, led to a justified minimisation on the part of the authorities in approaching her situation.

8) *Be that as it may, once it became clear to the applicant that the police did not consider her allegations sufficiently substantiated, there was nothing to prevent her from formally filing a written criminal complaint to the police substantiating her allegations that a criminal offence had been committed with a sufficiently detailed account of the relevant events. There are no reasons to consider that such a substantiated written report would have not been duly examined and investigated by the authorities*.

This practice can also assume different forms, such as direct character attacks on the victim or questioning the necessity of sensitive handling. These practices reflect a systemic bias that fails to adequately recognise the unique vulnerabilities of female victims in sexual assault cases.

In this same case, we also find evidence of another harmful practice, which aims at putting an emphasis on defence rights over the victim's comfort (b). More specifically, the dissenting opinion insists on the fact that the accused's right to confront witnesses and mount a defence is not fully guaranteed without considering how this face-to-face confrontation could affect the victim's psychological comfort (9).

9) *Other international documents on protection of victims, including those cited in the judgment, whilst concentrating on victims' rights in the course of criminal proceedings, also stress the importance of the rights of the defence. It appears uncontested that completely sacrificing the right of the accused in order to ensure the victim's psychological comfort is a step towards obtaining a wrong decision.*

This practice perpetuates a narrative that prioritises the rights of the accused over the trauma experienced by the victim.

Practice (c) minimisation of trauma is a technique used to diminish the lasting impact of sexual violence on victims. This is well exemplified in VALIULIENE v. LITHUANIA (10), where the judge first claims that the injuries sustained by the victim did not reach an acceptable level of severity to fall within the scope of Article 3 (prohibition of torture, inhuman degrading treatment or punishment) and later reinforces this argument by saying that any lasting consequences of the violence were not visible and did not render the victim unable to work.

10) *Accordingly in the particular circumstances of the present case (very minor injuries), I cannot accept that the applicant was subjected to ill-treatment which was sufficiently serious to be considered inhuman and degrading and thus to fall within the scope of Article 3 of the Convention*

Although it could be argued that this falls under the standard legal procedure, i.e. applying the so-called threshold test, we argue that the procedure itself can be seen as a discriminatory practice that undermines the severity of the violence and the experience of the woman who reports it.

Lastly, practice (d), the delegitimisation of prior court decisions, refers to instances in which an open criticism to the national court is found and consequent devaluation of their decision. A compelling case in point is JL v. ITALY, where the dissenting judge implies that the Italian court's recognition of societal prejudices about the role of women was biased by the composition of the Court, which

included two women and one man. This attitude is particularly dangerous, as it not only calls into question the impartiality of fellow judges but also perpetuates harmful stereotypes about women's ability to deliver objective and neutral judgments.

5. Discussion and Conclusions

This study sets out to explore dissenting opinions in ECtHR cases concerning gender-based violence with two main research questions guiding it: 1. identifying frequently used linguistic and discursive strategies, typical of the genre and the issue at stake, 2. determining the extent to which these strategies contribute to the reiteration of discriminatory practices, when the dissenting opinion contrasts rulings favourable to women who have experienced violence. We do so because we believe these linguistic and discursive choices influence the representation of gender-based violence victims, reinforce stereotypical representations, and shape legal outcomes and societal understandings of gender and human rights. The frequent presence of intertextual references in our dataset seemed particularly relevant in our study as it allows us to correlate gender-based discrimination and the ways in which it is framed within already existing discourses about violence and human rights. The types of references that we found serve a variety of functions, such as supporting the victim of violence, justifying the lack of measures taken to prevent the crime, underlining the unhelpful response from institutions to the call for help by victims or minimising the seriousness of the crime committed. These linguistic strategies are indicative of how quotations function as more than simple references in legal discourse. They are instruments of advocacy, persuasion and the construction of authority, particularly in cases involving gender-based violence. Judges employ a strategic selection of citations to legal precedents and international conventions, not only to strengthen their arguments, but also to challenge dominant legal narratives that often trivialise systemic issues.

At the same time, the use of citation as a persuasive argument underscores its dual role as both a mechanism of resistance and a tool

for perpetuating epistemic injustice. This interplay between language and power further stresses the crucial role of discursive practices in crafting the perceptions of justice, responsibility and systemic change in fighting gender-based violence. For instance, the use of historical references can be viewed as a way of contextualising the judicial practices and normalising given (discriminatory) practices. In Y. v. SLOVENIA, the dissenting judge reports a quote from Judge Scalia, famously known for his conservative views in the US Supreme Court, who quotes Shakespeare's Richard II to sustain his view that given procedures should remain as such considering that those practices were already in place in the XVI century. This type of argumentation suggests that we should follow tradition and not question practices that seem to be consolidated. This, though, begs the question, should we really follow procedures which were in place in a time when women were considered property of a man? This specific example also refers to a harmful practice identified in section 4.2 which fails to consider the vulnerability and impact on the victim in cases of confrontation with the defendant. Additionally, many references try to create a parallel with cases judged in countries in which the legal system is completely different, such as the US case mentioned above.

From the standpoint of FCDA, which is the primary lens employed for data analysis, the use of intertextuality can be a double-edged sword. On the one hand, it can serve to reinforce the critique of prevailing behaviours by drawing attention to exemplary practices. On the other, however, it can also perpetuate stereotypes and discrimination by highlighting cases that, from a gender and human rights perspective, are regarded as harmful practices. Furthermore, individuals who fight to have their cases presented before the ECtHR, considered as a "supranational body, created and operating within the realm of international law" (Garlicki, 2009, p.391), are likely seeking an impartial, unbiased and *super partes* evaluation of their case. Regrettably, the analysis of the retrieved practices suggests that gender-based stereotypes are so entrenched in our culture and everyday lives that even professionals who are selected to occupy such prestigious and complex positions are sometimes caught in the reiteration and reinforcement of said stereotypical behaviours. This, in turn, has serious consequences on the protection, equality and freedom of women.

We acknowledge the limited scope of our work and aim to expand the dataset and breadth of this research in the future. Prospective trajectories include the analysis of actors who do not identify as cisgender women, as well as conducting comparative analyses across different regional human rights courts (e.g., Inter-American Court of Human Rights), exploring how judges' national legal backgrounds and cultural contexts influence their use of intertextuality and perpetuation of stereotypes, and investigating temporal changes in intertextual practices and harmful discourses as the ECtHR's anti-stereotyping approach evolves.

Conflict of Interest Statement

The authors declare no conflicts of interest to disclose related to this manuscript. If any conflicts arise in the future, the Authors will promptly inform the journal.

AI Use Statement

The authors used artificial intelligence (AI) tools for language revision only. All scholarly content was developed independently.

Statement of Contributions

The authors have jointly discussed and conceived this paper. Nevertheless, individual contributions in writing this paper are identified as follows: Ilaria Giordano is responsible of sections 2.1, 3.1, 3.2, 3.3, 4.1, 4.1.1, 4.1.2, 4.1.3, 5. Angela Zottola is responsible for sections 1, 2, 4.2, 5.

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