

# Voices Against the Majority

## The Rhetoric of Pathos in ECtHR Dissenting Opinions on Gender-based Violence

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### Abstract

Although often perceived as carrying little authoritative influence, dissenting judicial opinions are increasingly recognised as critical instruments where judges articulate alternative legal interpretations that may become future doctrine. This forward-looking function creates a distinctive rhetorical imperative: dissenters must strategically select language to maximise persuasive impact across time, ensuring lasting influence on judicial evolution. Among the persuasive resources available to dissenting judges, emotional appeals prove particularly potent, as they render institutional failures viscerally comprehensible and morally intolerable in ways that purely doctrinal argumentation cannot achieve. This article therefore examines the strategic deployment of *pathos*-laden segments – the third of Aristotle’s three persuasive means – in dissenting judicial opinions from gender-based violence cases at the European Court of Human Rights. Drawing on a 33,000-token corpus of dissenting opinions addressing femicide, domestic violence, and sexual violence cases issued between 2012 and 2024, this study undertakes a qualitative textual analysis integrating Martin and White’s (2005) Appraisal Theory with Aristotelian rhetoric to analyse how evaluative language functions as a textual mechanism for generating specific emotions central to judicial persuasion. The analysis reveals that dissenting judges strategically use three attitudinal resources to build a tripartite emotional architecture that transforms readers from detached legal observers into morally compelled advocates for reform. Ultimately, findings also demonstrate that dissenting opinions in gender-based violence cases are not neutral vessels of legal reasoning but sophisticated rhetorical artifacts that balance formalist argumentation with affective engagement.

## 1. Introduction

Gender-based violence (GBV) constitutes a pervasive global phenomenon that transcends social, economic and national boundaries. Despite its pervasiveness, however, this issue remains entrenched in silence, perpetuated by beliefs and values that justify, dismiss, or normalise it as an ordinary aspect of male-female relationships.

Beyond these cultural barriers, the complexity of GBV stems from its multidimensional nature (Pandea et al. 2019, 18-19). As a fundamental human rights violation, it constitutes an

assault on human dignity, affecting not only physical health but also psychological wellbeing. Simultaneously functioning as discrimination, deeply rooted in harmful stereotypes and prejudices that marginalise women, GBV also acts as an obstacle to gender equality, perpetuating power imbalances and reinforcing dominant masculine norms. What is more, its extensive under-reporting, coupled with persistent impunity for perpetrators, further exacerbates these challenges, making effective institutional responses both urgent and difficult to achieve.

Within this complex landscape, judicial institutions – particularly international human rights courts – play a pivotal role in both addressing individual cases and shaping broader legal frameworks that govern state responses to this phenomenon. In this context, the European Court of Human Rights (ECtHR) has emerged as a particularly influential forum for developing case law on state obligations to prevent, address and punish violence against women: through landmark cases such as *Opuz v. Turkey* (2009), *Talpis v. Italy* (2017), and *Kurt v. Austria* (2021), the Court has progressively recognised GBV not merely as a private matter between individuals but as a systemic human rights violation requiring comprehensive interventions.

Yet, judicial progress is rarely linear or unanimous. In this perspective, dissenting opinions – seen as the statement of one or more judges which differs from the opinion of the majority (Goźdz-Roszkowski 2020, 383) – play a fundamental role as strategic instruments of persuasion: they target future courts, legal scholars and advocacy communities in an attempt to reshape judicial doctrine and catalyse more effective institutional responses to the phenomenon. When majority opinions inadequately address GBV, dissenting judges use these opinions to advocate for more protective legal frameworks and more effective institutional responses.

Against this backdrop, this study investigates the strategic deployment of *pathos*-laden segments by dissenting judges in their arguments against the majority. Given that GBV cases inherently involve the convergence of legal interpretation, profound emotional dynamics, and far-reaching societal implications, examining the role of *pathos* in these dissents proves particularly revealing for understanding how minority judicial voices attempt to reshape legal frameworks and catalyse institutional transformation.

## 2. Background and contextualisation

### 2.1 Gender-based violence: recognition vs. reality

The UN Declaration on the Elimination of Violence against Women defines the phenomenon of violence against women, or gender-based violence, as “any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or

in private life” (United Nations General Assembly 1993, 2). While the European Institute for Gender Equality (EIGE) recognises that individuals of all genders may experience such violence, there is a general consensus that GBV is an overarching concept encompassing various forms of abuse that primarily target women and girls.<sup>1</sup> Indeed, as evidenced by the 2011 Istanbul Convention, this violence “is directed against a woman because she is a woman” (Council of Europe 2011, 3).

GBV can manifest in many ways, including sexual, physical, verbal, psychological and socio-economic forms, varying in severity from online hate speech and verbal aggression to rape and murder. Perpetrators may be current or former intimate partners, family members, colleagues, peers, acquaintances, strangers, or individuals acting under the authority of cultural, religious, state, or intra-state institutions (Pandea et al. 2019, 18). However, what unifies these diverse manifestations is their underlying dynamics: GBV is fundamentally an exercise of power, driven by feelings of superiority and the desire to establish dominance within familial, educational, professional or broader societal contexts. As the Council of Europe (2024, 6) argues, “violence against women and girls remains one of the most pronounced expressions of the unequal power relations between women and men,” which emerge from deeper structural foundations rooted in socially constructed norms, roles, and relationships between socioeconomic groups (Giammarioli et al. 2023, 3; Montesanti and Thurston 2015, 2).

Nevertheless, despite GBV prevention being incorporated as a specific target within the 2030 United Nations Agenda for Sustainable Development (Goal 5) and substantial international frameworks being created – such as, *inter alia*, the 1993 UN Declaration on the Elimination of Violence Against Women, the 2011 Istanbul Convention, the Directive (EU) 2024/1385 of the European Parliament and of the Council on combating violence against women and domestic violence – evidence suggests that meaningful progress has been limited.

As Giammarioli and colleagues (2023, 4) observe, “the tradition of a patriarchal culture that still feeds the practice of possession in the affective relationship prevents one from reading the imbalance of man/woman relationships that is at the root of violence.” Indeed, recent data paint a worrying picture: the 2024 EU Gender-Based Violence Survey found that one in three women in the European Union has experienced physical or sexual violence at some point in their lives; one in eight has been subjected to sexual violence; and one in three has faced sexual harassment in professional settings (Eurostat 2024).

As the evidence demonstrates, a significant disparity persists between formal recognition of the problem and the lived experiences of women across Europe and worldwide. Domestic

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<sup>1</sup> European Institute for Gender Equality (EIGE), [https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence?language\\_content\\_entity=en](https://eige.europa.eu/gender-based-violence/what-is-gender-based-violence?language_content_entity=en). Last visited 10/09/2025.

violence, sexual assault, and femicide continue to occur at disturbing rates, while legal and judicial systems often fail to provide adequate protection. Survivors frequently encounter disbelief, victim-blaming attitudes, stereotypical assumptions, and insufficient institutional responses. Within this context, ECtHR's dissenting opinions emerge as particularly significant, since they serve as vital forms of intervention that highlight systemic failures and advocate for more comprehensive protective measures. It is precisely this role – serving as mechanisms for challenging inadequate judicial responses to GBV – that this article focuses on, examining how these minority voices contribute to advancing women's rights.

## **2.2 Dissenting opinions and the European Court of Human Rights**

The European Court of Human Rights, established in 1959 to adjudicate alleged violations of the 1950 European Convention on Human Rights (Bruinsma 2007, 7), holds the distinction of being the world's oldest regional human rights tribunal with the capacity to provide supranational remedies for rights violations (Nikitina 2025, 15). Headquartered in Strasbourg, the Court exercises authority over 46 Council of Europe member states and has produced an extensive body of jurisprudence (i.e., over 10,000 judgments) making it the international court with the most comprehensive case law to date (Pontrandolfo 2011, 214).

In recent years, the Court has developed a particularly significant anti-stereotyping approach in discrimination cases (Renzulli 2023, 156-159), with profound implications for GBV litigation. This interpretive methodology requires judges to actively scrutinise and contest harmful stereotypes and biased assumptions that influence how state institutions handle cases involving male violence against women. Significantly, this expanded interpretation of Article 14 transforms obligations from negative to positive duties: states must not only refrain from discriminatory practices but must proactively work to eliminate discrimination and adopt special measures to safeguard vulnerable groups such as women subjected to violence.

Since the Court's foundation, the practice of dissenting opinions – also known as *voti separati*, *contravoti* (Goźdz-Roszkowski 2020, 381; Kowalski 2020, 19), and rival reasoning (Cavaliere and Preite 2016, 171) – has been a fundamental characteristic of its jurisprudence (Nikitina 2025, 196; Pinto de Albuquerque and Cardamone 2019, 148). Article 45 of the Convention enshrines this right, stipulating that “if the judgement does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.”

Historically dismissed as inconsequential expressions of judicial disagreement lacking tangible influence, dissenting opinions have only recently been re-evaluated because of the multiple critical functions they serve within judicial systems (e.g. *inter alia*, Goźdz-Roszkowski 2020; McKeown 2021). First, they enhance public understanding of legal issues by exposing the interpretive complexities underlying judicial decisions. Second, they safeguard judicial

independence by ensuring that decisions reflect genuine deliberation rather than enforced consensus (Dunoff and Pollack 2023, 2). Third, and most importantly, they shape the trajectory of legal development. When dissenting judges critique prevailing doctrines or propose alternative approaches, they generate interpretive resources for future judgements: minority positions at one point in time may later evolve into the majority view (Hinkle and Nelson 2017, 4).

Given these prospective functions, dissenting opinions employ considerable rhetorical resources. As Hinkle and Nelson (2017, 2-3) observe, dissents are inherently future-oriented texts, designed to speak beyond the immediate case to multiple audiences. Judges must therefore exercise strategic discernment in their linguistic choices, crafting arguments that satisfy multiple communicative objectives simultaneously: their language must be persuasive enough to influence future judicial reasoning, sufficiently clear to be cited in subsequent cases, and rhetorically salient enough to remain portable across legal contexts. From this perspective, dissenting opinions are far more than conventional legal documents recording minority viewpoints; rather, they are persuasion-oriented texts, deliberately constructed to operate across temporal and institutional boundaries. In this light, dissenting judges must therefore adopt the strategic mindset of skilled rhetoricians, selecting argumentative structures, linguistic registers, and framing techniques calculated to resonate with diverse audiences.

This rhetorical dimension takes on greater importance in dissenting opinions addressing GBV. Such cases inherently involve the convergence of multiple dimensions: technical legal interpretation, profound emotional and psychological dynamics, and far-reaching societal implications. Judges writing dissents in these contexts face distinctive challenges requiring them to integrate rigorous legal analysis with sensitivity to trauma, acknowledgment of systemic inequalities rooted in cultural biases, and recognition of entrenched societal stereotypes that shape institutional responses to violence against women. Thus, the persuasive task is multifaceted: judges must demonstrate doctrinal flaws in the majority opinion while also articulating alternative frameworks that recognise the lived realities of violence. These intricate requirements render dissenting opinions in GBV cases particularly complex persuasive texts that demand systematic analysis through the lens of rhetorical theory.

### ***2.3 State of the art***

This study seeks to contribute to scholarly literature on rhetorical analysis and legal discourse. Specifically, while Aristotelian rhetoric has been applied across various domains, including political, diplomatic and social network discourse (Hsiu-Ching 2015; Mshvenieradze 2013; Donahue and Prosser 1997), and digital political communication (Samuel-Azran et al. 2015; Bronstein 2013), its application to the legal field remains limited.

Scholarship on legal rhetoric has traditionally concentrated on oral courtroom presentations, examining phenomena such as non-verbal behavior and its persuasive effects (Boccaccini and Brodsky 2007), the application of classical rhetorical principles to courtroom advocacy (McCormack 2014), and phonetic dimensions of judicial speech (Yakutina et al. 2020). Other work in these fields has examined written persuasion in judicial opinions, focusing on reasoning patterns, argumentative structures, and judicial style (Feteris 2017; Mazzi 2007). Yet, sustained rhetorical analysis of specific judicial subgenres – particularly dissenting opinions – has yet to be fully developed.

Similarly, while the Appraisal Theory, developed within systemic functional linguistics, has become widely used in discourse analysis, its applications have predominantly centered on other domains: though productively applied to political speeches (Uddin Awais et al. 2024; Lian 2018; Ding 2017) and news discourse across various topics (Ayine and Bonsu 2025; Chao Sun et al. 2025), its application to judicial discourse – and particularly to the analysis of *pathos* in dissenting opinions on GBV cases – remains unexplored.

This study therefore seeks to conduct a rhetorical analysis of dissenting opinions in European Court of Human Rights gender-based violence cases. Combining Aristotelian rhetorical analysis with Appraisal Theory, the study is guided by the following research question:

How do dissenting judges in ECtHR gender-based violence cases deploy *pathos*-based rhetorical strategies to challenge majority opinions and advocate for enhanced victim protection?

### 3. Theoretical Framework

To address the research question outlined above, this study adopts a combined methodological framework that integrates Aristotelian rhetorical analysis with the Appraisal Theory model developed within systemic functional linguistics (Martin and White 2005)

#### 3.1 Aristotelian rhetoric

This study applies the Aristotelian theory of rhetoric, as conceptualised in his three books known collectively as *Ars Rhetorica* (4th century BC), which is considered “the earliest authoritative analysis of persuasive discourse and argumentative techniques” (Frost 1994, 86). According to him, rhetoric is defined as “the faculty of observing in any given case the available means of persuasion” (Aristotle, Book I, II): in other words, it is the systematic study and application of techniques designed to identify and deploy the most effective strategies for convincing an audience in any context. This art, or *techne*, primarily instructs orators on how to construct the so-called “artistic proofs” (the Greek *pisteis*), which are “those means of persuasion

that, unlike non-artistic proofs, must be designed or ‘invented’ by speakers themselves” (Rubinelli 2018, 362).

In his theory, Aristotle identified three modes of persuasion. The first is *ethos*, which concerns the credibility and moral character of the speaker. Persuasion through *ethos* arises when the audience perceives the speaker as trustworthy, knowledgeable, and an authority on the subject. Secondly, *logos* refers to the logical structure and rational content of the argument itself. This mode of persuasion relies on reasoned discourse, presented evidence, constructing chains of inference, and employing both deductive and inductive reasoning. Finally, *pathos* engages the emotions of the audience and puts them “into a certain frame of mind” (Aristotle, Book II, Chapter I): in his opinion, emotional appeals activate feelings such as sympathy, indignation, fear or compassion, thereby rendering the audience more receptive to the speaker’s argument.

Of these three modes of persuasion, this contribution focuses on *pathos* and its role in legal discourse, a choice that merits justification given the field’s historical resistance to emotional appeals. Indeed, traditional legal scholarship has favoured *logos* as the appropriate mode of judicial persuasion, treating emotional and ethical appeals as deviations from rational neutrality. As McCormack (1994, 133) notes, “revealing how rhetorical knowledge operates in legal practice is particularly difficult since legal practice is marked by a vehement denial of its rhetorical nature.” However, this institutional prioritisation of reason over emotion is a tension that has been present since the origins of rhetorical theory. Despite his official denial, Aristotle himself recognised the centrality of emotions in legal contexts. In his *Ars Rhetorica*, while he states that judicial cases should ideally be discussed by referring only to facts and aspects related to the legal issue in question, he simultaneously admits that emotions are highly influential in the legal context and, consequently, speakers must leverage on them whenever possible (Frost 1994, 7).

### ***3.2 Appraisal Theory: a framework for evaluative language***

In order to investigate the emotional dimension of dissenting opinions in a methodologically rigorous way, this study adopts the Appraisal Theory framework developed by Martin and White (2005). Grounded in Systemic Functional Linguistics (SFL), Appraisal Theory offers a structured approach to examine how language conveys evaluation and establishes emotional positioning within discourse. The framework identifies the linguistic resources through which speakers and writers express positive or negative assessments, convey attitudes, and take a stance on particular perspectives.

This analytical approach is particularly useful for revealing how, despite their ostensibly neutral and objective register, dissenting opinions strategically employ evaluative language to shape readers’ responses and direct emotional reactions towards specific interpretive

conclusions. Appraisal Theory encompasses three interconnected semantic domains: Attitude, Engagement, and Graduation. Attitude concerns the expression of feelings, ethical judgements, and aesthetic evaluations embedded within discourse. Engagement considers how writers position their own voice in relation to alternative viewpoints and competing perspectives, managing dialogic space through mechanisms of acknowledgment, endorsement or rejection. Graduation modulates the intensity and force of evaluative expressions, amplifying or reducing the strength of attitudinal meanings. While all three domains interact to create the overall evaluative tenor of a text, this study primarily focuses on Attitude. This domain offers the most direct means of examining how dissenting judges encode evaluative positions – whether through expressions of emotion (Affect), assessments of behaviour (Judgement), or evaluations of institutional processes and outcomes (Appreciation) – in their rhetorical construction of gender-based violence cases.

The Attitude system itself comprises three distinct yet interrelated semantic categories. Affect captures expressions of emotion and feeling, encompassing the full spectrum of human emotional experience: happiness, sadness, fear, desire, anger, and satisfaction. Judgement evaluates human behaviour through social and ethical norms, assessing actors according to criteria such as capacity (competence), tenacity (resolve), veracity (truthfulness), and propriety (ethical correctness). Appreciation appraises the value, quality, composition, or significance of entities, processes, and abstract phenomena rather than human behaviour per se.

Crucially, Appraisal Theory directs analytical attention not to isolated grammatical elements but to “meaning in context” and the “rhetorical effects” that evaluative language produces within specific communicative situations (Martin and White 2005, 94). This contextual orientation aligns with the present study’s focus on how dissenting judges employ emotional and evaluative language as persuasive strategies in GBV cases.

## 4. Materials and methods

### 4.1 Dataset

The investigation draws upon a specialised corpus totalling approximately 33,000 tokens and comprising 12 judgements and 14 dissenting opinions (see Tab. 1). All documents were manually retrieved from HUDOC, the European Court of Human Rights’ freely accessible online database, which provides comprehensive access to judgments, decisions, and related legal documentation pertaining to the ECtHR and the European Convention on Human Rights.

Database compilation followed rigorous inclusion criteria encompassing temporal, linguistic, institutional, and thematic parameters. Temporally, only dissenting opinions published between 2012 and 2024 were considered. Linguistically, inclusion was restricted to texts

originally authored in English rather than translations. Institutionally, the corpus encompasses only opinions issued by the Court's two principal judicial configurations: the Grand Chamber (17 judges) and the Chamber (7 judges). Thematically, the selection focused exclusively on cases adjudicating criminal law matters involving gender-based violence: sexual violence, domestic violence, and femicide.

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

**Tab.1:** Texts comprised in the dataset

#### 4.2 Analytical Framework

This study adopts a qualitative corpus-assisted approach combining software-supported pattern identification with close textual analysis, operationalised through a systematic four-phase protocol informed by classical rhetorics. Specifically, the protocol began with a reading of the complete dissenting opinion corpus to identify emergent thematic patterns and highlight discursive focal points. Secondly, the corpus underwent systematic rhetorical annotation using CATMA (Computer Aided Text Markup and Analysis), an open-source digital platform that enables flexible tagging of textual segments (Horstmann et al. 2020) according to Aristotle's tripartite framework of *ethos*, *logos*, and *pathos*. From this point onwards, the analysis concentrated exclusively on *pathos*-laden segments. Thirdly, Martin and White's (2005) Appraisal Theory framework was applied to these emotional appeals using AntConc analysis software (Anthony 2024). This allowed for the systematic examination of how attitudinal meanings are distributed across the corpus through concordance analysis and collocational patterns. This phase involved categorising *pathos* segments into the three sub-systems of attitude: affect (expressions of emotion), judgement (evaluations of behaviour), and appreciation (assessments of value). Finally, each segment was subjected to micro-level lexico-grammatical

analysis to examine the specific linguistic mechanisms (i.e., lexical selection, syntactic structures, modality, metaphorical framing, and evaluative language) through which persuasive effects are generated in the text, and to determine the rhetorical function of each attitudinal resource within its argumentative context.

## 5. Results and discussion

The systematic application of Appraisal Theory framework to the corpus of dissenting opinions reveals a distinctive distribution of attitudinal resources across the three semantic categories, as shown in Table 2. A total of 170 instances of attitudinal language were identified, distributed as follows: Affect, 40 occurrences, Judgement, 64 occurrences and Appreciation, 66 occurrences.

The latter two categories primarily focus on evaluating institutional performance and on critiquing failures (1) and inadequacies of state actors and systems (2). In contrast, the former captures the emotional dimension of victim' experiences (3), conveying the fear, suffering, and trauma produced by inadequate protection. This distribution reflects the dual rhetorical function of dissents: critiquing institutional actors while humanising victims and their suffering.

Regions of meaning	Frequencies of occurrence
Affect	40 (23.5%)
Judgement	64 (37.6%)
Appreciation	66 (38.9%)
<b>Total</b>	<b>170</b>

**Tab. 2:** Distribution of Appraisal Model semantic regions in dissenting opinions

- (1) I have come to the conclusion that **they should have known**, when they stopped him and checked his identity at 2:25 am on 25 November 2013, of the existence of a real and immediate risk to the physical integrity and/or life of the Applicant (and her children) from the criminal acts of her husband and **that they failed to take measures** within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. (TALPIS V ITALY)
- (2) In sum, the **very lenient disciplinary punishment** of the police officers, followed by **the complacent attitude of the Slatina Municipal State Attorney's office**, the **erroneous acquittal of police officer M.T.** and the **convenient time-barring of the prosecution** against police officer M.Ko., leave serious doubts about the

respondent State's willingness to carry out a proper investigation (BLJAKAJ AND OTHERS V. CROATIA)

- (3) This certainly **resulted in the deepening of her feelings of insecurity, frustration and deep trauma**, particularly in the light of her earlier victimisation and fears for the future (J.I. V CROATIA).

This distribution pattern reveals a calculated rhetorical architecture employed by dissenting judges in gender-based violence cases. The predominance of Appreciation (38.9%) signals a deliberate institutional critique: dissenting judges draw on institutional performance metrics and judicial frameworks to destabilise majority rulings, reframing them as flawed, socially dangerous or institutionally unprecedented, thereby manufacturing distrust towards legal standards. In the end, the comparatively lower frequency of Affect (23.5%) demonstrates that *pathos* is used selectively and deliberately in judicial discourse: when it appears, it evokes the human cost of legal decisions and captures the emotional dimension of victims' experiences, including trauma, suffering, fear and vulnerability.

### ***5.1 The Appreciation category: reframing GBV as public safety crisis***

Appreciation resources serve as discursive mechanisms that evaluate institutional responses, systems, processes and existing legal frameworks. Expressed through evaluative adjectives (Biber et al. 1999) that carry strong emotional valence while maintaining the appearance of factual description, and binomial adjectival construction that intensify evaluative force through rhetorical accumulation (Kopaczyk 2017), appreciation strategies exhibit two complementary discursive and persuasive patterns corresponding to the Reaction and Valuation subcategories. The former constructs a narrative of institutional betrayal by measuring state performance against its own professed standards and legal obligations:

- (4) The operational measures taken were **neither sufficient nor proportionate** (KURT V. AUSTRIA).

Rather than treating failures as isolated events, dissenting judges strategically accumulate instances of inadequacy to reveal a systemic pattern of state abdication: as can be seen in (4), the binomial construction combines two adjectives of escalating semantic force – moving from quantitative inadequacy ('sufficient') to qualitative inappropriateness ('proportionate'), thereby framing state failure as a matter of both insufficient action and flawed responses. The Valuation subcategory, on the other hand, reconceptualises gender-based violence from a private matter

occurring within intimate relationships into an urgent public emergency demanding state intervention: by portraying violence as inevitable and imminent, Valuation eliminates any temporal distance that might justify institutional delay and rendering hesitation morally indefensible:

- (5) This begs the following question: did the national authorities know, or ought they to have known, that the lives of the applicant and her son were at **real and immediate risk** on 25 November 2013? (VIERU V. MOLDOVA)

In (5), the construction “real and immediate risk” combines two pre-modifying adjectives that work together to eliminate epistemic uncertainty and temporal distance, thereby presenting the threat as both ontologically certain and temporally urgent.

This rhetorical move not only argues that action is needed but also restructures the situation itself so that any delay becomes ethically indefensible.

### ***5.2 The Judgment category: critiquing institutional actors***

Judgement resources strategically target the professional competence and ethical conduct of institutional actors, evaluating their behaviour against the normative standards of state responsibility in GBV cases. Rendered linguistically through achievement verbs with negative semantic prosody that assign culpability for preventable failures (Levin 1993), modal verbs (epistemic and deontic) that underline the gap between what should have been done and what could have been prevented (Biber et al. 1999; Palmer 1990), metaphorical constructions paired with temporal markers that emphasise the cyclical and escalating nature of violence, or evaluative adjectives acting as markers of factual distortion and evidence manipulation, Judgement techniques enact two complementary persuasive patterns corresponding to the Social Esteem and Social Sanction dimensions. The Social Esteem sub-frame employs the Capacity pattern to reveal institutional incompetence and document missed opportunities for victim protection:

- (6) Despite the victim’s complaint that the perpetrator had been harassing her, wandering around her property and carrying knives and guns, the police and prosecuting authorities **failed either to place him in detention or to take other appropriate action in respect of the allegation that he had a shotgun and had made violent threats with it** (VIERU V. MOLDOVA)

By cataloguing specific failures as preventable consequences of inadequate professional action, dissenting judges construct a counter-narrative of state culpability. Harm does not emerge from unpredictable circumstances beyond institutional control, but from deficient performance that falls below objectively achievable standards of competence: as illustrated in example (6), the verb “failed” carries inherent negative semantic prosody by presupposing that the actions it negates – placing the perpetrator in detention or taking appropriate measures – were both within institutional capacity and required by professional obligation, thereby framing inaction as culpable omission rather than justified restraint. The Normality patterns within this frame, conversely, challenge the institutional tendency to treat abuse as a series of isolated incidents by emphasising the repetitive and patterned nature of gender-based violence:

- (7) Our judgment **should have taken** into account the notion of inferiority of women, referred to by GREVIO in its third-party comments (point 8), as well as the imbalance of power between men and women that is often present in domestic violence situations (see the applicant’s observations, p. 30), the **cycle of violence** (GREVIO’s comments) and the **spiral of violence** (ibid., p. 16) in order to evaluate the real and immediate risk. (KURT V. AUSTRIA).

Through linguistic markers emphasising recurrence and duration, dissents semantically encode violence as inherently cyclical and escalatory: as example (7) shows, the metaphorical constructions “cycle of violence” and “spiral of violence” invoke distinct but complementary temporal schemas – the former suggesting inevitable repetition and the latter connoting intensifying escalation – which reframe violence from isolated explosive events to predictable patterns that demand systematic preventive intervention.

On the other hand, the Social Sanction sub-frame activates the Veracity pattern to expose institutional factual distortion and logically untenable reasoning. This rhetorical strategy plays a vital role in delegitimising institutions: while Capacity judgments portray them as incompetent, Veracity judgments expose them as manipulating facts or ignoring evidence:

- (8) In other words, the civil courts based their findings on an **“illogical” and scientifically untenable evaluation** of the facts of the case. Such a **blatant error** definitively prejudiced the effectiveness of the civil remedies provided for by law. (BLJAKAJ AND OTHERS V. CROATIA)

In example (8), the reference to “scientifically untenable evaluation” implies that the courts disregarded medical evidence to reach predetermined conclusions aligned with gendered

preconceptions, while “serious factual misjudgements” signals not accidental error but systematic distortion.

### 5.3 *The Affect category: evoking the human cost*

Though the least frequent in the corpus, Affect resources carry a significant emotional weight in dissenting opinions in GBV-related ECtHR cases, evoking strong emotional responses that render the human suffering visible. Expressed through figures of speech, particularly *climax* structures that build ascending emotional intensity, affective stand-alone adjectives that directly encode victim suffering (Biber 1999), and polemic negations that reject institutional complacency through emphatic denial (Garzone 2016), Affect techniques pursue three complementary persuasive objectives that correspond to the Insecurity, Unhappiness, and Dissatisfaction subcategories. The Insecurity frame constructs narratives of escalating danger and victim vulnerability, evoking the pervasive climate of fear that characterises victims’ experiences of violence. By rendering the escalatory logic of violence visible, dissents activate reader identification and eliminate the psychological distance that enables institutional indifference:

- (9) A proper assessment would have informed the authorities of the **vulnerability, helplessness and entrapment** the victim must have experienced after her aggressor had been released on probation (VIERU V MOLDOVA)

As demonstrated in example (9), the triadic accumulation of “vulnerability, helplessness and entrapment” builds a climatic structure where each term intensifies the constraint described by its precedent, thus linguistically showing the progressive constriction of the victim’s capacity for self-protection. This rhetorical strategy universalises the experience of the woman, establishing a “this could be anyone” effect and rendering state inaction not only inadequate, but also personally intolerable.

The Unhappiness frame, then, constructs a narrative centred on loss and suffering, which institutional discourse typically softens or abstracts:

- (10) The case disclosed a lasting situation of domestic violence that had culminated in the **tragic death** of the applicant’s sister (VIERU V MOLDOVA)

By directly naming the profound human cost of violence (e.g., through the adjective ‘tragic’ in example (10)), dissents reframe gender-based violence as preventable human tragedies resulting from inadequate institutional intervention. This formulation performs counter-

narrative work that delegitimises minimisation: domestic violence emerges not merely as unfortunate or regrettable, but as tragic, demanding societal recognition, judicial empathy, and a transformative state response.

Finally, the Dissatisfaction frame addresses institutional complacency and inadequate responses by expressing frustration and resentment that evoke moral indignation toward systemic failures. By openly criticising institutional indifference, dissenters offer ethical condemnation rather than merely identifying deficiencies.

- (11) Firstly, **we cannot understand** the complacency of the disciplinary authorities which punished the police officers M.Ko. and M.T. with minor penalties, even though they had been found guilty of very serious professional misconduct (BLJAKAJ AND OTHERS V. CROATIA)

As evident in example 11, the polemic negation (Garzone 2016) expresses emphatic rejection rather than genuine confusion, with the dissenting judges signalling not epistemic uncertainty but moral incomprehension of an institutional response too inadequate to be rationally justified. Against this backdrop, this subcategory thus functions as a performative call to action, establishing the moral imperative for more effective institutional interventions to prevent further harm, and refusing to accept bureaucratic inertia as a defensible institutional stance.

#### ***5.4 From Appraisal to Aristotelian pathos: the strategic architecture of judicial emotion***

These Appraisal resources constitute a systematic rhetorical architecture engineered to activate specific emotions central for persuasive force. The linguistic patterns examined – Judgement’s institutional critique, Appreciation’s systemic failure narratives, Affect’s human cost – operate as textual mechanisms for the elicitation of what Aristotle termed *pathē* (Book II, 1), the audience emotions indispensable to judicial persuasion. The analysis of the dataset reveals that dissenting opinions in gender-based violence cases strategically cultivate three primary emotions from this classical taxonomy, arranged in a carefully orchestrated sequence.

First and most prominently, dissents cultivate *nemesis* (indignation toward systemic injustice) and *orgē* (anger) through three complementary strategies: exposing institutional incompetence via systematic documentation of preventable failures; constructing counterfactual scenarios of missed protection opportunities that causally link inaction to violent outcomes; and presenting institutional actors as deliberately deceptive through veracity critiques characterizing reasoning as “scientifically untenable” or “not coherent.” This triple indictment, i.e., incompetence, negligence, and dishonesty, transforms institutional failure from bureaucratic inadequacy into moral betrayal, establishing the foundation for ethical outrage.

Second, dissents evoke *eleos* (pity) by systematically documenting undeserved sufferings and repeated victimisations. By arranging violent episodes in ascending severity and explicitly naming prolonged trauma, judges render victims as blameless individuals abandoned by protective institutions. This emotional register shifts the discourse from abstract institutional critique to visceral human consequences, creating compassionate identification with those harmed.

Third, dissents employ *phobos* (fear) through a dual mechanism. “Primary” fear emerges through escalating descriptions of violence and suffering that render the trajectory from abuse to fatal harm viscerally immediate. More strategically powerful, however, is a “secondary” fear, which operates through universal identification: by demonstrating that protective systems abandoned compliant victims who sought institutional help, judges collapse the psychological distance separating “those women” from “any citizen,” transforming gender-based violence from an isolated issue into a generalised insecurity.

The strategic orchestration of these three emotions follows a deliberate rhetorical logic designed to maximise persuasive impact. Rather than simply accumulating emotional appeals, dissents deploy them in a three-stage progression that converts impartial judicial observers into committed reformers. The sequence begins with fear, which establishes existential stakes through universal identification, rendering GBV an imminent personal threat rather than an abstract legal category. Once readers recognise their own vulnerability within failed protective systems, pity activates compassionate engagement by documenting systematic, undeserved suffering that competent action could have prevented. Finally, indignation and anger convert this accumulated affective energy into demands for systemic transformation: having established both personal stakes and moral obligation, dissents channel emotional intensity toward specific reforms, rendering continued institutional inaction not merely inadvisable but ethically intolerable.

## 6. Concluding remarks

This study examined how dissenting judges in gender-based violence cases deploy *pathos*-based rhetorical strategies to challenge majority opinions and advocate for enhanced victim protection. By integrating Martin and White’s Appraisal Theory (2005) with Aristotelian rhetoric, the analysis revealed how linguistic resources, namely Judgement, Appreciation, and Affect, function as textual mechanisms for eliciting specific emotions (*nemesis*, *orge*, *eleos* and *phobos*) that orient readers toward moral evaluation, emotional alignment, and alternative interpretations of institutional responsibility.

Crucially, these findings reveal a specific emotional architecture that characterises the dissenting opinions in GBV jurisprudence, one that aims at recalibrating the future interpretive horizon of a legal domain long shaped by minimisation, victim-blaming, and gender-based stereotypes (Fredman 1998). Judgement resources are employed to expose institutional incompetence and factual distortion, thereby constructing a stance that invites indignation and anger at preventable failures. Appreciation resources are used to reframe gender-based violence as a systemic public safety crisis rather than isolated private incidents, positioning the issue as one demanding collective institutional response. Finally, Affect resources evoke fear through escalating violence descriptors and cultivate pity through systematic trauma documentation, rendering the human cost of inadequate protection visible.

The results presented in this work align with, and advance, recent scholarship in legal rhetoric and judicial discourse (Cohen De Lara 2018; Corradi 2024; McCormack 2014; Pinho 2023), because they not only demonstrate that judicial language – particularly in dissenting opinions – is fundamentally persuasive and reader-oriented in nature, but they also show that rhetorics operates as a constitutive force in the construction of competing legal realities through the systematic deployment of evaluative resources. Additionally, this study extends the insights on the discursive nature of dissenting opinions provided by previous studies on the topic (Nikitina 2025; McKeown 2021; Goźdź-Roszkowski 2020), by providing an empirical mapping of the linguistic mechanisms through which dissenting judges in GBV cases strategically orchestrate emotional architecture to challenge majority rulings. Specifically, the systematic application of Appraisal Theory with Aristotelian theory reveals that the 170 instances of attitudinal language identified function not merely as rhetorical embellishments but as textual instruments for activating specific classical emotions through a three-stage progression that invites moral alignment and position readers toward specific evaluative orientations. Moreover, these findings also provide empirical substance to Hinkle and Nelson's (2017) theoretical claim that dissenting judges operating from positions of institutional minority must strategically calibrate their linguistic choices to maximise persuasive impact. By revealing the precise mechanics of strategic resource selection, this study demonstrates empirically that persuasion in dissenting opinions is achieved not solely through doctrinal reasoning but through the deliberate orchestration of framing devices, evaluative language, and emotional appeals.

As the European Court of Human Rights continues developing its anti-stereotyping jurisprudence and as societal awareness of gender-based violence evolves, dissenting opinions will likely continue serving as critical vehicles for progressive legal development. Understanding the rhetorical strategies through which dissenting judges construct their arguments proves essential for scholars, advocates, and judges seeking to strengthen legal protections for women experiencing violence.

Despite the contributions outlined above, this study is subject to limitations that should be acknowledged. Comparative analysis with majority opinions would help determine whether these emotional architectures are distinctive to dissent or characteristic of GBV jurisprudence broadly. Additionally, analysis of original judgments in other official ECtHR languages would establish whether the identified patterns reflect pan-European judicial practice or are shaped by translation effects and Anglophone discourse conventions. This study also opens up a variety of avenues for future research. For example, comparative analysis across different legal systems could reveal whether these rhetorical patterns also appear in other international courts, national supreme courts or regional human rights bodies. Diachronic studies could track how dissenting rhetoric adapts in response to changing social movements and evolving public awareness of gender-based violence. Finally, a comparative analysis of dissents addressing other systematic human rights violations across legal domains could identify whether similar pathos-based patterns emerge, distinguishing between domain-specific and general features of judicial advocacy rhetoric.

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