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Hedging in the Majority and Dissenting Opinions of the European Court of Human Rights and the Supreme Court of the United States

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Abstract

Hedging can play an important role in conveying nuanced language, and this feature of hedges seems to be of particular importance in legal discourse. This study aims to describe and compare the use of epistemic lexical verbs as hedging devices in two written genres produced at two well-known courts; namely, the majority and dissenting opinions of the European Court of Human Rights and the Supreme Court of the United States. The corpus used in this study consists of two sets of 10 majority opinions and two sets of 10 dissenting opinions produced at the two courts, 40 judicial opinions in total. Lexical realization, frequency and function of speculative, deductive, quotative and sensorial lexical verb hedges were compared. Results show that certain specific patterns of use of lexical verb hedges can be determined in both the majority as well as the dissenting opinions. Qualitative analysis demonstrates how particular patters of hedging may be linked to differing communicative purposes in judicial opinions. Future studies may analyse hedging patterns in the judicial opinions produced at other courts of law and compare them to the findings of this study.

1. Introduction

Author's stance has been a widely studied topic in linguistics over the last couple of decades (Biber & Finnegan 1989; Hyland 1998; Martin & White 2005; Hyland & Jiang 2018). It should be of no surprise that author's stance is so widely studied because it deals with how writers or speakers "approve and disapprove, enthuse and abhor, applaud and criticise" as well as how they position themselves in relation to their readers (Martin & White 2005:1). Author's stance also has a role in professional fields, as it helps to create a bond between writers in those professional fields and their respective discourse communities, which often require a certain kind of writing style (Hunston & Thompson 2000). Due to its pervasiveness in various professional (academic and non-academic) discourses, author's stance has enjoyed considerable attention in ESP research. It has mostly been studied in various genres of academic discourse: research article (Conrad & Biber 2000; Silver 2003; Burrough-Boenisch 2005; McGrath & Kuteeva 2012; Gross & Chesley 2012; Hyland & Jiang 2018), textbook (Bondi 2012), student thesis (Thompson 2012; Hyland 2012) and even academic bios (Tse 2012). However, author stance in other professional discourses, for example, legal discourse, has received noticeably less attention from linguists, although some studies on stance in legal discourse do exist (Mazzi 2010; Mazzi 2014; Sala 2014; Hafner 2014; Vass 2017).

Approaches to author's stance have traditionally been divided into two major categories: "entity focused" (affect (Biber & Finnegan 1989), emotion (Wierzbicka 1990) and attitudinal stance (Conrad & Biber 2000), among others) and "proposition focused" (evidentiality (Biber & Finnegan 1989) and epistemic stance (Conrad & Biber 2000), among others) (Martin & White 2005:39). Due to the constraints on the length of this paper, the present study is interested only in the "proposition focused" author's stance. It seems that epistemic stance is the most suitable term to use when analysing proposition focused author's stance in legal discourse as it clearly demonstrates the link to epistemic modality, which denotes the author's commitment to the truth value of the proposition (Palmer 1986).

Epistemic stance may play an important role in such language-dependent disciplines as law because epistemic stance seems to add certain shades of meaning to the proposition. These shades of meaning are often crucial in terms of the underlying meaning of a legal text, such as a judicial opinion (Epstein, Landes & Posner 2011). However, it is often very difficult for a layperson to discern the shades of meaning that the usage of epistemic stance by judges and other legal professionals may add. Understanding and discerning subtle legal language is usually manageable for professionals who have to deal with such language on a daily basis. However, understanding nuanced meanings in legal texts is particularly

challenging not only for laypeople who do not read such texts often but also for legal professionals who "come from a completely different background, are trained within a different legal system and whose first language is not English" (Vass 2017:18). This is especially important when considering that nowadays there are international courts, such as the European Court of Human Rights. The judges of international courts come from different linguistic and legal backgrounds and have to communicate in one common language, which is usually English or French. Usually professional translators, interpreters and language editors help in terms of mitigating the linguistic gaps, however particular challenges still remain, especially in terms of hedging when formulating majority and dissenting opinions (Breeze 2016).

One of the most important linguistic phenomena which fall under the umbrella of epistemic stance is hedging. Hedging comes into focus here not only because of its epistemic nature and importance in legal discourse but also because of its pervasiveness in the English language. It is especially common and well-studied in English academic discourse (Hyland 1998), however, it is understudied in legal discourse, despite its apparent importance in creating meaning in legal texts (Vass 2017).

1.1. Hedging

Hedging is a linguistic phenomenon and a constituent of what we call author's stance, it serves many crucial functions in discourse and helps shape the specific discourse. For instance, writers can use hedging to express uncertainty of knowledge and show a lower degree of commitment to a proposition (Mauranen 1997). In this way hedging allows indicating the true level of knowledge and understanding an author has in relation to the results found. In addition, it can tone down, in other words, hedge, a claim, presenting it as an opinion rather than a fact (Hyland, 1998; Salager-Meyer 1997). This feature of hedging is useful in cases when certain unmitigated statements could evoke potentially face-threatening criticism and opposition from peers. Hedging can also allow the author to express humility and deference to the reading public (Salager-Meyer 1997), not only helping to safeguard oneself from unwanted conflict with other scholars, but also indicating a willingness to engage in dialogue and exchange of opinions. Therefore, the important social and interactional functions that hedging serves, as well as the role it plays in conveying nuances in meaning having to do with certainty and commitment, have been well established in academic literature (Poos & Simpson 2002). That is exactly the reason why a certain degree of usage of hedges has become a conventional norm in many discourses, especially the formal ones.

Hedging allows the author to conform to an "established writing style" (Salager-Meyer 1997:109), which is expected by members of the discourse community. One of such discourse communities, where hedging is a conventional norm, seems to be that of legal discourse (Breeze 2016).

As it has been already mentioned, the competence of interpreting hedges in legal discourse can be "notoriously problematic" even for legal professionals, who are non-native speakers of English, although it is crucial to a legal system which relies so heavily on interpretation of precedents and linguistic data (Abbuhl 2006:152). This can be due to quite a few factors: lack of understanding of both socio-pragmatic (Tessuto 2011) as well as disciplinary rules (Abbuhl 2006) regarding the use of hedging, and lack of targeted instructional activities that help non-native students of law notice and interpret hedging techniques correctly (Hyland 2003). Such inability to interpret hedging can result in second-language speakers failing to understand a native speaker's meaning (Fraser 2010). It is also important to note that hedging in English can be quite an arbitrarily defined term. Often there is "no limit to the linguistic expressions that can be considered as hedges <...> no linguistic items are inherently hedges but can acquire this quality on the communicative context or co-text" (Clemen 1997:6). According to Fraser (2010), elements of any syntactic category can form a hedging device. Even though there are some problems with defining the specific range of hedging devices employed in a particular discourse, most of the hedges in professional writing are very clearly used as such in terms of their semantic components of meaning of tentativeness and indeterminacy (Hyland 1998). Such elements are generally interpreted as hedges by most linguists.

Hedging has been shown to be a constituent part of legal research articles (Sala 2014), barrister's opinions, a genre used by counsel to advise their clients on the strength of their case (Hafner 2014) as well as judgments and judicial opinions (Mazzi 2014; Vass 2017). There also have been studies on the discourse produced by students of law. Bhatia, Langton & Lung (2004) and Tessuto (2011) focused on student writing and analysed the use of hedges in the legal problem-question answer genre. The authors concluded that both lexical surface hedges and non-lexical strategic hedges are "crucial for deductive reasoning and legal argumentation" (Bhatia, Langton & Lung 2004:218), while Tessuto, who compared English and Italian writers, found that there were differences in terms of incidence and purpose of hedging which he attributed to "discoursal differences embedded within differing socio-cultural and legal systems" (2011:309). Hafner (2014) found that hedging is used to reflect the degree of confidence a barrister has in a particular position. Hinkle et al. (2012) looked at judgments at the U.S. District Court level and found that the greater the ideological distance

between the district court judge writing the judgment and the circuit court judge reviewing his decision, the greater the amount of hedging used. This study suggests that hedging is used as a shield which helps judges avoid harshly criticising their colleagues and, in turn, receiving harsh and categorical criticism themselves. Toska (2012) analysed a phenomenon often related to and overlapping with hedging, epistemic modality, and found that the justices of the UK Supreme Court express epistemic stance through the modal verbs 'may', 'might' and 'could'. These modal verbs are often seen as very prototypical hedges, used not only in legal writing but also in academic discourse (Hyland 1998). In addition, Cheng & Cheng (2014) studied epistemic modality in court judgments from Hong Kong and Scotland and found that its use in both corpora indicate that there is a comparatively similar standard of the accepted amount of hedging in the discourse communities of judges in Hong Kong and Scotland. Mazzi (2014) showed that justices of the Supreme Court of Ireland employ, among other instruments, hedging in order to "negotiate their standpoint with the expert readership most likely to approach their written opinions" (2014:57). Vass (2017) demonstrated that patterns of the use of epistemic lexical verb hedges in judicial opinions can be linked to specific communicative purposes. She also showed the differences in terms of the usage of hedging techniques in majority opinions and dissenting opinions. Unlike other texts in the legal domain, such as, among others, student writing and barrister's opinions, judgments and judicial opinions seem to be of utmost importance because the judgments are legally binding and form the foundation of case law (Breeze 2016).

1.2. Judicial opinions and courts

Judicial opinions include a majority opinion which becomes a judgment as well as optional dissenting and concurring opinions. As the name implies, majority opinions are supported by a majority of the judges hearing a case and are legally binding. Concurring opinions are expressed by judges who agree with the majority's opinion, but for different reasons, while dissenting opinions are written by those who disagree with the majority (Vass 2017). Nevertheless, while the balance of power rests with majority opinions, which are binding by law, dissenting opinions are no less important in informing future generations of law practitioners and courts involved in related cases. The U.S. Supreme Court is comprised of nine members in total; eight justices presided over by the most senior member known as the Chief Justice. The process to become a Supreme Court justice entails first being nominated by the President upon the death or retirement of a former member, and then being confirmed by the U.S. Senate. Presidents generally favour those who share their political leanings and

support their policies. Thus, given that the appointment of a new member to the Court upon the death or retirement of a former member is "a political process from beginning to end" (Kahn 1995:25), it is perhaps foreseeable that the justices often hold quite different ideological views resulting in relatively few unanimous decisions. As the justices often have wildly different views of history and the law, the Court is often divided. This study analyses only majority and dissenting opinions as they often express divisive views on a given case, which could lead to more definite differences in terms of the use of hedges.

It is not uncommon for at least one or two justices to disagree with the majority, and while they are not required to give their reasons, most do, in fact, prepare a dissent to support their opposing interpretation of the law. Judges often dissent on issues, which are internal to the case, such as "flawed legal reasoning, inadequate explanations or evidence, misunderstandings of fact" (Breeze 2016:364). Sometimes the dissent is based on inquiring about the purpose of a particular law or the intention of particular lawmakers (Vass 2017). Dissenting judges often aim "to arouse public opinion against the majority opinion" (Patrick et al. 2001:192), so that in the future the dissenting opinion becomes the basis for a majority opinion in a similar case. As Chief Justice of the U.S. Supreme Court Evans Hughes once explained:

> *A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.* (in Vass 2017)

It is unsurprising then that both majority and dissenting opinions are often highly persuasive documents aiming to convince readers of the robustness of the reasoning presented to them, particularly since readers can include not only those directly involved in the case, such as litigants, fellow judges on the same bench, judges at a lower appeal level, the judge of the trial court where the case was first heard before being appealed, and the counsel appearing before the judge, but also those who were not directly involved including policy makers, lawyers, law students, legal press reporters and academics at large (Kurzon 2001). It is also important to note that a dissenting opinion imposes a kind of 'cost' on the majority. For example, a dissent in the Court of Appeals increases the length of the majority opinion by about 20 percent (Epstein, Landes & Posner 2011). As the authors show, it seems that dissents not only impose costs on the majority but also yield "minimal benefits" to a dissenter, at least in the present-day period (2011:103)

However, it is important to note that the judicial opinions are rarely read by the laypeople involved in the cases. As the opinions are written in formal legal English, they are often read by law students or practicing lawyers, therefore to enhance their understanding it is advantageous to analyse hedging, which is one of the aspects of judicial opinions,

contributing to the subtle nuancing of often legally binding language. Hedging can play a key role in striking a balance between rhetorical persuasion and power relations in this context. To the best of my knowledge, there is a lack of studies analysing specific aspects of author stance in the genre of judicial opinions. Thus, to address this issue I will specifically examine hedging in the majority and dissenting opinions from two courts: the Supreme Court of the United States and the European Court of Human Rights.

According to van Geel (2001), the U.S. Supreme Court majority opinions include four sections. The first part identifies the case heard and summarises the facts peculiar to the case and its procedural history. The second part establishes the legal claims by determining the issue or issues and clarifies the rules which govern those issues. The third part is called the reasoning and it is the main body of the judicial opinion in which the Court strives to justify its decision by analysing the application of the laws to the facts of the case at hand. In the final part, the decision is declared. Generally, dissenting opinions are much shorter than the majority opinions and focus on the reasoning for an alternative decision. The structure of the European Court of Human Rights majority and dissenting opinions is very similar to that of the U.S. Supreme Court.

Although different in terms of jurisdiction, the European Court of Human Rights and the U.S. Supreme Court both are very well known courts. Whereas the U.S. Supreme Court represents one country, namely, the United States of America, the European Court of Human Rights has jurisdiction over most of the European states, with the exception of Belarus, the Vatican City and Kazakhstan (Smith & van der Anker 2005). That makes it quite fascinating to compare hedging in the opinions of justices in these two courts not only from an intercultural perspective, but also to investigate if differences in the opinions of justices could be attributed to the fact that the U.S. Supreme Court is a national institution while the European Court of Human Rights is an international institution.

Linguistic features, one of them being hedges, have been analysed in the opinions of the U.S. Supreme Court justices, albeit scarcely, in academic literature before (Mazzi 2010; Vaas 2017). Previous studies suggest that the usage of hedges indeed differs in majority and dissenting opinions, with the dissenting justices opting for a more hedged language in order to mitigate the potentially face-threatening claims (Vaas 2017). However, as Fanego & Rodriguez-Puente (2019) argue, there is relatively little research into intradisciplinary variation, especially in the domain of law. There is clearly a lack of research into intradisciplinary variation in terms of hedging in the judicial opinions produced by the justices of different courts. To the best of my knowledge, there have not been any studies conducted comparing the author's stance or, more specifically, hedging in the opinions of the

European Court of Human Rights justices and those of the U.S. Supreme Court. In general, it seems that the U.S. Supreme Court enjoys more attention of scholars in comparison to the European Court of Human Rights and other European courts.

As it is yet relatively unclear how hedges are used in the opinions of the U.S. Supreme Court and the European Court of Human Rights, the aim of this study is to contribute to the body of knowledge regarding hedging in legal discourse. Firstly, I will determine which lexical items, specifically lexical verbs, are used as hedges in the majority and dissenting opinions of the U.S. Supreme Court and the European Court of Human Rights. Then, I aim to compare the hedges used in the judicial opinions of both courts. Another purpose of this study is to demonstrate the functions of lexical hedges and hedging as a linguistic aspect in the majority and dissenting opinions of the U.S. Supreme Court and the European Court of Human Rights. Finally, I will try to determine whether the functions or the prevalence of hedging in the judicial opinions of the courts analysed may be attributed to the composition of the courts, namely, the fact that one court is national and the other one is international.

To accomplish these aims, I will employ Hyland's (1998) classification of hedges, which I will describe in greater detail in Section 2. In the same section I will also describe the composition of the corpus and the methods used to conduct this study. Section 3 will feature generalized results of the analysis of the entire corpus as well as the separate subcorpora of the European Court of Human Rights and the Supreme Court of the United States majority and dissenting opinions. It will also include the analysis of lexical verb hedges in the majority and dissenting opinions of both courts as well as the comparison of the analysed hedges. Section 3 will also encompass the analysis of the ECHR and the SCOTUS majority and dissenting opinions in terms of the functions of hedges found. Finally, I will provide conclusions in Section 4.

2. Data & Methods

This study is based on a corpus consisting of 40 judicial opinions, 20 in each synchronic comparable sub-corpus representing two courts, i.e. European Court of Human Rights (hereinafter – ECHR) and Supreme Court of the United States (hereinafter – SCOTUS), which came from 20 cases heard before the courts in 2019 and 2020 (the list of cases can be found in Appendix 1 and 2). Each quantitatively comparable sub-corpus features 10 majority and 10 dissenting opinions. The ECHR sub-corpus consists of 196,469 words and the SCOTUS sub-corpus consists of 114,375 words. The judicial opinions were selected according to several criteria. In order to address any bias arising from any one justice's writing style, texts produced by different judges were included. In the case of the 10 ECHR dissenting opinions, they were written by 10 different justices or groups of justices, while in the SCOTUS sub-corpus, the dissenting opinions of seven different justices were included. Another criterion, in the case of ECHR, was to include only judicial opinions produced by the 7-member Chamber or the 17-member Grand Chamber. This was done in order to ensure comparability to the 9-member SCOTUS. As regards the selection of the judicial opinions, they were selected manually with the help of the search function in the official websites of ECHR and SCOTUS so as to find the most recent cases with judicial opinions which satisfy the requirements of this study.

The choice of these two data sets seems to be advantageous due to three main reasons. First of all, these courts reflect the use of English both as a native as well as a non-native language; the SCOTUS being a domestic court of law with only English used as a native tongue, while the ECHR is a supranational organisation, consisting of judges from 47 countries. Each judge brings not only their own language but also their own culture and legal conventions, which may have an effect in terms of how these judges from different countries write judicial opinions. Secondly, SCOTUS seems to be more politically charged due to the fact that all the judges are nominated by a sitting president who belongs to one of the two main political parties: Republicans or Democrats. On the other hand, ECHR could be seen as less confrontational due to the relative absence of political involvement by the politicians in their home countries. This could be a matter of importance considering that hedging is a technique used to avoid conflict and deflect responsibility away from the author. Another important aspect to note about the comparison of judgments from these specific courts is that both of them are courts of last resort: SCOTUS in the United States and ECHR within the jurisdiction of all 47 member states of the Council of Europe.

The majority and dissenting opinions were extracted in pairs from the same cases in order to compare the language of the judges from the same court panel. The judgments were also chosen based on a synchronic approach due to the need to analyse contemporary hedging practices rather than its diachronic use because in this paper emphasis is put on recent developments of hedging in legal discourse. The corpus data is provided in Table 1. The corpus data was analysed with the help of corpus analysis tool AntConc 3.5.6 (Anthony 2018).

Table 1. Composition of the corpus.

	# of majority opinions	# of dissenting opinions	# of tokens
ECHR	10	10	196,469
SCOTUS	10	10	114,375
Totals	20	20	310,844

I have operationalized the definition of lexical verb hedges using a list of 40 high frequency epistemic lexical verbs which could be used as hedges (Vass 2017). The list was lemmatized and I have checked the texts in the corpus for the lexical verbs from the list. However, specific verbs do not always act as hedges, therefore, in order not to misrepresent the discourse, I have used the Concordance function in AntConc 3.5.6 (Anthony 2018) and examined the context of potential hedges to determine if they were used as such. Cases in which the lexical item was not used as a hedge were excluded.

The lexical verbs used as hedges were categorised according to the model of Hyland (1998), who argues that epistemic modality can be classified into four different categories based on how the writer expresses commitment to the truth value of a proposition: speculative, deductive, quotative and sensorial. The ‘speculative category’ contains verbs such as ‘believe‘ or ‘think‘ which indicate that the proposition at hand is a subjective opinion rather than an objective fact. ‘Deductive’ verbs such as ‘infer‘ or ‘assume‘ indicate that inference is being made based on known facts, or that a deductive conclusion is demonstrated. The ‘quotative’ category includes verbs such as ‘suggest‘ which indicate that the author is presenting second-hand information while ‘sensorial lexical’ verbs such as ‘seem‘ or ‘appear‘ indicate that a proposition is based on the author‘s senses. It is important to note that some verbs (‘believe‘, ‘argue‘) may appear in more than one category. For example, ‘suggest’ and ‘argue’ may be speculative if used with a first person pronoun, and they may be quotative if used with a third party nominal subject, e.g. ‘Hyland suggests’ (Vass 2017:19).

The functions of the extracted hedges were also analysed. The functions were examined in accordance with the model of Vass (2015), who contends, building on previous studies (Namsaraev 1997; Mauranen 1997; Hyland 2005; Hyland 2009; Fraser 2010; Salager-Meyer 1997), that hedging can fulfil four central functions:

1. Shielding the addresser from potentially negative or embarrassing responses, thus helping to avoid conflict which could hinder effective communication;
2. Emphasizing the subjectivity of a claim by presenting it as a reasonable opinion rather than a certain act, this, in turn, invites the reader to participate in its ratification. This also opens up a discursive space indicating respect for other viewpoints;
3. Allowing the addresser to show commitment or lack thereof to the truth value of the proposition in order to either disguise the fact that he does not know all of the precise details or to achieve greater precision by expressing the true level of knowledge and understanding he has of the topic;
4. Enabling the writer to convey stance in relation to a claim.

(Vass 2015:150)

In Section 3 I am going to present the quantitative and qualitative results of the analysis. In the same section I will describe the results of categorisation as well as the functional analysis of lexical verbs. Discussion of the results will also be provided in Section 3. In Section 4 I will present conclusions of the study and provide some implications for further research.

3. Results & Discussion

In this section I am going to present the results of the analysis. Firstly, I will introduce the general results of the quantitative analysis. Then, in Section 3.2 I will provide the results of the analysis of the usage of lexical verb hedges in the majority and dissenting opinions of ECHR and SCOTUS as well as the comparison of the ECHR majority opinions to the SCOTUS majority opinions and the ECHR dissenting opinions to the SCOTUS dissenting opinions. Finally, in Section 3.3 I will report the results of the qualitative analysis of the usage of lexical hedges in terms of the functions they perform.

3.1. General results of the quantitative analysis

In this section, general findings of the quantitative analysis will be presented and discussed. In this study, I have found that some lexis from the aforementioned list of 40 potential hedges (see Table 2) is not present in the judicial opinions analysed in this study. However, it is important to note that, although the number of lexical items in the list of potential hedges is 40, the actual maximum number of types of potential hedges in the corpus is 34 due to the fact that six lexical verbs in speculative and quotative categories overlap.

Table 2. 40 potential hedges in four categories.

Speculative	Deductive	Quotative	Sensorial
argue	*assume*	*allege*	*appear*
believe	*conclude*	*argue*	*feel*
consider	*deduce*	*believe*	*look*
doubt	*estimate*	*claim*	*notice*
expect	*evaluate*	*contend*	*observe*
indicate	*infer*	*indicate*	*see*
propose	*presume*	*maintain*	*seem*
suggest	*reason*	*propose*	*sense*
speculate	*suppose*	*suggest*	*sound*
think	*surmise*	*think*	*view*

Table 3. Total word types, tokens and the type-token ratio.

	ECHR Maj.	ECHR Diss.	SCOTUS Maj.	SCOTUS Diss.
Total word types	6,777	4,109	6,022	5,971
Total word tokens	158,165	37,291	58,717	55,658
Type-token ratio	0.042	0.11	0.103	0.107

As can be seen in Table 3, the majority opinions produced by the justices of the European Court of Human Rights are much longer than those produced by their colleagues in the Supreme Court of the United Stated. In general, majority opinions produced in both courts are longer than the respective dissenting opinions but the difference in length is negligible in SCOTUS. The reasons for this discrepancy in terms of the length of judicial opinions, with ECHR majority opinions being much longer not only than the dissenting opinions in both courts, but also longer than the SCOTUS majority opinions, are unclear. On the one hand, ECHR majority opinions might be longer due to procedural differences, which stem from the fact that ECHR is an international court while SCOTUS is a domestic one. For example, in ECHR majority opinions one can find a section called 'Comparative Law Material', where relevant legislation in the Council of Europe member states is presented and discussed. Another possible reason, which could explain the difference in length between the ECHR and SCOTUS majority opinions, has something to do with ECHR being an international court. Usually, a case is heard firstly by the first instance court, then by a court of appeal (i.e. second instance) and then by the Supreme Court, which delivers the final and unappealable decision. SCOTUS is one such court. However, ECHR is an international court with a broader jurisdiction, which could be the reason why the majority opinions produced by the ECHR justices are longer as in an international context there may be more material to discuss.

Table 3 also demonstrates another interesting finding: the language of ECHR majority opinions, compared to ECHR dissenting opinions as well as SCOTUS majority and dissenting opinions, is more formulaic. This observation stems from the fact that the type-token ratio in ECHR majority opinions is roughly 2.5 times lower than in ECHR dissenting opinions and SCOTUS majority and dissenting opinions. Once again, the reasons for this discrepancy in formulaicity are unclear. One possible reason could be the usage of the so-called 'Euro-English' (Biel, Biernacka & Jopek-Bosiacka 2018), which is the variety of English used in supranational organisations, such as the European Union or the Council of Europe. It seems that this huge bureaucratic machine of an international organisation, such as the Council of Europe (and its court, the ECHR) might have a tendency to overuse certain phrases in the produced discourse. However, it is important to note that comprehensive

conclusions about the formulaicity of the majority opinions of the ECHR cannot be drawn solely from the low type-token ratio.

Table 4. Number of potential hedge lemma types, tokens and their frequency per 1,000 words in four subcorpora.

	ECHR Maj.	ECHR Diss.	SCOTUS Maj.	SCOTUS Diss.
Potential hedge types	31	29	31	32
Potential hedge tokens	2,236	563	811	749
Norm. frequency/1,000	14.1	15.1	13.8	13.5

Table 4 shows the frequency of lexical items from the list of potential hedges (see Table 2). The frequency of lemmas under analysis is quite similar across all four subcorpora. The difference between the frequency of lexis from the list of potential hedges is, indeed, statistically not significant in the case of ECHR majority opinions vs. SCOTUS majority opinions (log-likelihood = 0.32). However, in the case of ECHR dissenting opinions vs. SCOTUS dissenting opinions a statistically significant difference may be observed (log-likelihood = 4.23; $p < 0.05$). The difference may arise in the case of dissenting opinions due to the fact that the ECHR is less politicised than the SCOTUS (Kurzon 2001). As the ECHR justices work in a more-or-less apolitical environment, there is more of a need for potentially mitigating lexical items, especially when a judge decides to dissent and write a dissenting opinion. Another possible reason is that the ECHR is an international; therefore, a multicultural court by default. The European justices may tend to hedge their statements more often because of politeness in the face of so many different cultures that the justices from Council of Europe member states bring into the organisation with themselves.

I also have to mention that some potential hedge lemmas are extremely frequent; while others are non-existent at all (i.e. the distribution of lemmas is extremely uneven). As can be seen in Table 5, the most frequent lemma is *see*, followed by *reason, consider, view* and *claim*. *See*, in particular, is very frequent due to it being commonly used as a tool of referencing other parts of that judicial opinion (e.g. *see paragraph 51 below*) or other legal documents (e.g. *see Khodorkovskiy v. Russia, no. 5829/04 § 255, 31 May 2011*). A typical instance of *see* as a referencing word in the corpus looks as follows:

(1) *But courts today zero in on the precise statutory text and, as a result, courts hew closely to the text of severability or nonseverability clauses.* ***See*** *Seila Law LLC v. Consumer*

Financial Protection Bureau, ante, at 33 (plurality opinion); cf. Milner v. Department of Navy, 562 U.S. 562, 569–573 (2011). (SCOTUS MAJ 5)

Table 5. 20 most frequent lemmas from the potential hedge list in the entire corpus.

Lemma	# of occurrences	Lemma	# of occurrences
see	1,394	*appear*	108
reason	404	*suggest*	105
consider	351	*maintain*	81
view	292	*doubt*	66
claim	238	*sense*	52
allege	191	*think*	50
indicate	181	*assume*	49
observe	155	*notice*	46
conclude	146	*contend*	40
argue	118	*expect*	40

It is of utmost importance to note that these analysed lemmas do not represent the actual number of lexical verbs used as hedges because some of the verbs were not used as hedges, while others belonged to a different part of speech (e.g. *reason* could be a verb or a noun). The absolute frequency of 30 most frequent lexical verbs from the analysed list of lexis used as hedges is presented in Table 6.

Table 6. 30 most frequent lexical verbs used as hedges

Lexical verb	# of occurrences	Lexical verb	# of occurrences
consider	168	*believe*	23
allege	159	*expect*	20
observe	125	*view*	13
indicate	110	*infer*	11
conclude	109	*reason*	11
argue	93	*propose*	10
suggest	91	*presume*	9
appear	76	*suppose*	9
claim	50	*look*	6
maintain	42	*doubt*	5
contend	36	*evaluate*	5
seem	35	*feel*	4

assume	33	*sound*	2
see	30	*speculate*	2
think	27	*deduce*	1

Table 6 demonstrates the absolute frequencies of lexical verbs used as hedges. When comparing the frequency of these hedges to the number of instances a particular lemma occurs in the corpus (see Table 5), an interesting trend emerges. On the one hand, certain lemmas are only sporadically used as lexical verb hedges. One of such lemmas is *see*, which occurs 1,394 times in total but functions as a lexical verb hedge only 30 times (i.e. only 2.2% of instances of *see* in the corpus are lexical verbs functioning as hedges). In the case of *see*, the reason for such discrepancy is due to the aforementioned function of this verb in legal discourse; namely, that it is used to refer to other parts of the same document or other legal documents. Another similar example is the lemma *reason*, which occurs 404 times, but is a lexical verb functioning as a hedge only 11 times (2.7% of instances of *reason* are lexical verbs functioning as hedges). This is due to the fact that *reason* in the corpus was usually a noun rather than a verb. *Doubt* is yet another interesting case: the lemma itself may be either a noun or a verb, with both *doubt* as a noun and *doubt* as a verb being possible hedges. In the present study it was found that *doubt* is usually a noun. However, as only lexical verbs functioning as hedges are within the scope of this study, *doubt* as a noun was excluded, although some of the instances were indeed nominal hedges. In total, only 5 out of 66 (7.6%) instances of *doubt* found in the corpus were lexical verbs acting as hedges.

Another important finding is the fact that some lexical items (*estimate, surmise, notice* and *sense*) were not used as lexical verb hedges at all. *Surmise* is an exceptional case as it was not found at all in the corpus, pointing to the idea that Hyland's (1998) list of potential lexical verb hedges could be extended or altered when analysing legal discourse. However, Hyland (1998) was focusing on academic discourse, and disciplinary differences could be the reason for this discrepancy in the usage of lexical verb hedges.

3.2. Results of the analysis of lexical verb hedges

In this section, I will provide the results of the analysis of the usage of lexical verb hedges separately in the majority and dissenting opinions of ECHR and SCOTUS. The comparison of majority and dissenting opinions of both courts will be provided in this section as well.

3.2.1. Lexical verb hedges in the majority opinions

Section 3.2.1. presents the results of the analysis of the majority opinions. Firstly, the results of the analysis of the ECHR majority opinions will be presented, followed by the analysis of the SCOTUS majority opinions.

3.2.1.1. The European Court of Human Rights

The next table presents the frequency of lexical verbs from the four verb categories proposed by Hyland (1998), which are often used as hedges.

Table 7. Normalized frequencies of lexical verbs used as hedges in the ECHR majority opinions, values expressed in tokens per million (TPM).

Speculative	TPM	Deductive	TPM	Quotative	TPM	Sensorial	TPM
argue	0	*assume*	50.6	*allege*	790.3	*appear*	208.6
believe	19	*conclude*	278.2	*argue*	271.9	*feel*	6.3
consider	701.8	*deduce*	0	*believe*	6.3	*look*	6.3
doubt	19	*estimate*	0	*claim*	94.8	*notice*	0
expect	50.6	*evaluate*	6.3	*contend*	63.2	*observe*	607.0
indicate	278.2	*infer*	25.3	*indicate*	303.5	*see*	50.6
propose	0	*presume*	25.3	*maintain*	132.8	*seem*	19
suggest	82.2	*reason*	6.3	*propose*	12.6	*sense*	0
speculate	6.3	*suppose*	19	*suggest*	0	*sound*	0
think	6.3	*surmise*	0	*think*	0	*view*	12.6
Total	**1163.3**		**411**		**1675.5**		**910.4**

The results show that justices who produce the majority opinions in the ECHR seem to prefer hedging their statements with certain verbs over the other ones. Overall, Table 7 shows that lexical verb hedges belonging to the quotative category are the most frequently used in the ECHR majority opinions, followed by speculative, sensorial and deductive. It seems that quotative hedges are the most preferred due to the fact that a substantial part of the ECHR majority opinions consist of discussing the background to the case in question as well as its merits and origins in the Council of Europe member state, from which the case originated.

The most frequent speculative lexical verb in the ECHR majority opinions was *consider*, followed by *indicate* and *suggest*. Speculative verbs allow writers to express an opinion about what might be true. Two of the three most frequent speculative lexical verbs can be included in both the speculative and quotative categories. As speculative verbs, they are usually used with the first person pronouns, as well as in impersonal constructions. The

examples below show typical uses of speculative *indicate* and *suggest* in the ECHR majority opinions. For convenience, the lexical verbs in the examples will be indicated in bold.

(2) *She drew attention to the fact that deportation proceedings might have a significant impact on an individual, where the classified information* ***indicated*** *that he or she could be involved in terrorist activity or linked to a terrorist group, on account of the practical consequences that such a characterisation might have for the person concerned.* (ECHR MAJ 7)

(3) *The reports nevertheless conclude that the number of people employed to run extracurricular activities is insufficient, although the children's wide-ranging needs and their vulnerability* ***suggest*** *that educational activities should be arranged in small groups.* (ECHR MAJ 10)

In both examples, the contextual clues; namely, epistemic modal verbs *might* and *could* in the first example and the usage of a deductive lexical verb *conclude* in the second example point to the fact that *indicated* and *suggest* function as hedges in these sentences. The use of impersonal constructions (i.e. *the classified information indicated* and *wide-ranging needs and their vulnerability suggest*) diminish the writer's responsibility for the proposition, therefore minimizing any threat to face which can be caused by opposition to the statement. In the ECHR majority opinions, speculative lexical verbs are usually found in impersonal constructions. When referring to the court itself, the ECHR justices producing the majority opinion do not use the first person pronouns 'I/we' at all. Instead, in the majority opinions ECHR refers to itself as *the Court*. An example of such construction with a speculative verb *consider* is provided below. In this example, the ECHR delivers its decision in the case, mitigating the statement with the speculative verb *considers* and, at the same time, boosting the claim with *In the light of the foregoing*, i.e. by referring to all the evidence provided beforehand.

(4) *In the light of the foregoing, the Court* ***considers*** *that, at the material time, by deciding to treat homosexual couples – for the purposes of granting a residence permit for family reasons – in the same way as heterosexual couples who had not regularised their situation the State infringed the applicants' right not to be discriminated against on grounds of sexual orientation in the enjoyment of their rights under Article 8 of the Convention.* (ECHR MAJ 9)

As it has been mentioned, *consider* was the most frequent speculative lexical verb in the ECHR majority opinions. This verb is frequently used to denote the court's opinion on whether something is or is not the case. Usually, a speculative *consider* is followed by a to-clause or a that-clause or preceded by the mitigating adverb *reasonably*, as illustrated in the examples below.

(5) *Such a positive obligation cannot be* ***considered*** *to be limited solely to cases of ill-treatment by State agents (see M.C. v. Bulgaria, no. 39272/98, § 151, ECHR 2003-XII; Šečić v. Croatia, no. 40116/02, § 53, 31 May 2007; and Beganović, cited above, § 66).* (ECHR MAJ 3)

(6) *Having regard to A.J.'s clinical history and in particular the fact that he had attempted to commit suicide on 1 April 2000, the Chamber* ***considered*** *that the hospital staff had reasons to expect that he might try to commit suicide again.* (ECHR MAJ 4)

(7) *In that connection it is essential that the facts grounding the suspicion should be justified by verifiable and objective evidence and that they can be reasonably* ***considered*** *as falling under one of the sections describing criminal behaviour in the Criminal Code.* (ECHR MAJ 6)

In examples (5), (6) and (7), the ECHR delivers its argumentation in that particular case. The usage of hedging techniques is very important here as the justices are in a position of authority and as such their argumentation and opinions matter greatly though, of course, they have to be supported by reason. Thus, in the majority opinions hedges help to achieve the balance between an unmitigated and potentially too straightforward or harsh claim and personal opinion, which does not suit the discourse of such an important court.

In terms of the deductive lexical verbs, there are two key aspects to discuss. Firstly, deductive lexical verbs are the least frequent of the four verb categories. The reasons for this seem to be two-fold. On the one hand, certain verbs, such as *deduce*, *surmise*, *estimate* and *evaluate*, may be considered to be more prevalent in other discourses and rarely used by the practitioners of legal discourse. This idea is supported by the low frequency of these verbs. On the other hand, the lemma *reason* is quite frequent but it is usually used as a noun rather than a verb, therefore it has been excluded in the present study. A second aspect to discuss here is the fact that among deductive lexical verbs, the concentration of hedges is very high: more than 75 per cent of deductive lexical verb hedges are either *assume* or *conclude*. The examples below illustrate the usages of *assume* as a hedge when providing argumentation in the case and of *conclude* when delivering final remarks and the decision itself.

(8) *The Court finds that in the instant case it does not appear that the applicants, an unmarried homosexual couple, were treated differently from an unmarried heterosexual couple. As domestic law recognises only a "spouse" as a "family member" and not a cohabitant ... it is reasonable to* ***assume*** *that, like the second applicant, a heterosexual partner who was not an EU national could also have been refused a residence permit sought for family reasons in Italy.* (ECHR MAJ 9)

(9) *Nevertheless, whilst the Government failed to substantiate their argument that the measures taken against the applicants were justified by reasonable suspicions, leading the Court to find a violation of Article 5 § 1 and Article 10 of the Convention, this would not*

by itself be sufficient to ***conclude*** *that Article 18 has also been violated (see Navalnyy, cited above, § 166).* (ECHR MAJ 6)

In example (8), the deductive verb *assume* is used with the adjective *reasonable*, which points to the argumentation of the court, invoking the image of a reasoned decision that is, in turn, well defended against opposing views. *Conclude* is the most frequent deductive lexical verb by far as it is often used in the final parts of a majority opinion, where the court sums up the reasons for that particular decision and delivers the decision itself.

Quotative lexical verbs are the most frequent in the ECHR majority opinions. The most frequent hedges in this category are *allege*, *indicate* and *argue*, followed by *maintain* and *claim*. In the ECHR majority opinions, the quotative lexical verbs are mostly used to discuss the arguments of the applicant, the defendant and any other relevant parties. The aforementioned verbs are similar in terms of their usage, although what differs is the shade of meaning, as illustrated in the examples below.

(10) *The applicants (except for Turhan Günay and Ahmet Kadri Gürsel) complained that their initial and continued pre-trial detention had been arbitrary. They* ***alleged****, in particular, that the judicial decisions ordering and extending their pre-trial detention had not been based on any concrete evidence grounding a reasonable suspicion that they had committed a criminal offence.* (ECHR MAJ 6)

(11) *The prosecutor's office further* ***maintained*** *that during the period when the applicant had been the publication director of Cumhuriyet, starting on 1 September 2016, he had been responsible for articles in the newspaper which the prosecutor described as "manipulative", both in terms of the choice of articles and the exaggerated tone used in them in order to indoctrinate the public.* (ECHR MAJ 6)

(12) *She* ***indicated*** *that, as a Russian citizen, the applicant had no genuine possibility of applying for international protection in Belarus and was at constant risk of expulsion to Chechnya, where he would face the threat of torture or of other forms of inhuman and degrading treatment.* (ECHR MAJ 8)

In example (10), *alleged* is used to refer to an allegation made by the applicants that decisions of the courts in their home country had been wrong. Example (11) illustrates the typical usage of the quotative lexical verb *maintained*, which is used to report on the position of some official institution or the country. Finally, example (12) illustrates the way subjectivity of the third party in this case is emphasized in the ECHR majority opinions using the quotative hedge *indicated*.

As it has already been mentioned, some speculative and quotative verbs overlap; therefore, some of them might appear in the speculative category but be absent from the quotative category and vice versa. Such is the case of *suggest*, which is used only in the

speculative but not quotative sense. On the other hand, the quotative *propose* is used, albeit rarely, while the speculative *propose* is absent from the ECHR majority opinions.

The most frequent sensorial lexical verbs were *observe* and *appear*. *Observe* is often used to refer to the arguments and the background of the case and *appear* is used to hedge the level of commitment to the truth value or reasonableness of the arguments. The examples below illustrate these two usages quite well.

(13) *By contrast, in the light of the degree of complexity of the issues raised by the case and the content of the submissions made on behalf of the applicant, the number of hours claimed* ***appears*** *reasonable.* (ECHR MAJ 1)

(14) *The Court* ***observes*** *that there* ***appears*** *to be nothing untoward in the chronological sequence of the acts of which the applicants were accused and the opening of the investigation concerning them (see, conversely, Kavala, cited above, §§ 225-28).* (ECHR MAJ 6)

As can be seen in example (14), the proposition is double hedged and the ECHR uses both *observes* and *appears* so as not to sound too bold in relation to the claim the justices are making. Such hedging techniques, which involve the usage of two hedges one after another, are quite frequently used in academic discourse (Hyland 1998); they also have been observed in legal discourse (Mazzi 2014; Vass 2017).

Other sensorial verb hedges are used less often, although it is important to discuss *see* and *seem*. The former is found 677 times in the sub-corpus of the ECHR majority opinions, but it is used as a hedge only eight times, while the latter is used only three times at all, although always as a hedge. *See* was used primarily to refer to the source of information or another part of the same document while the relative absence of *seem* in the ECHR majority opinions is quite surprising, given that it is rather frequent in other genres of legal discourse (Abbuhl 2006; Vass 2017).

3.2.1.2. The Supreme Court of the United States

As Table 8 shows, quotative lexical verbs are the most frequent in the SCOTUS majority opinions, followed by deductive, sensorial and speculative verbs. It seems that the preference for quotative verbs falls in line with such preference in the ECHR majority opinions due to the fact that justices have to rely on many different sources of information, which might sometimes be too straightforward or lack clarity and quotative hedges help the justices save face and avoid unnecessary commitment to the truth value of the statements they are quoting.

Table 8. Normalized frequencies of lexical verbs used as hedges in the SCOTUS majority opinions, values expressed in tokens per million (TPM).

Speculative	TPM	Deductive	TPM	Quotative	TPM	Sensorial	TPM
argue	0	*assume*	153.3	*allege*	238.4	*appear*	187.3
believe	0	*conclude*	664.2	*argue*	425.8	*feel*	17
consider	119.2	*deduce*	0	*believe*	68.1	*look*	34.1
doubt	0	*estimate*	0	*claim*	255.5	*notice*	0
expect	102.2	*evaluate*	51.1	*contend*	323.6	*observe*	119.2
indicate	0	*infer*	34.1	*indicate*	51.1	*see*	221.4
propose	51.1	*presume*	51.1	*maintain*	136.2	*seem*	272.5
suggest	187.3	*reason*	34.1	*propose*	0	*sense*	0
speculate	0	*suppose*	17	*suggest*	408.7	*sound*	0
think	85.2	*surmise*	0	*think*	136.2	*view*	85.2
Total	**545**		**1,004.8**		**2,043.7**		**936.7**

The most frequent speculative lexical verbs in the SCOTUS majority opinions were *suggest*, *consider* and *expect*. Interestingly, speculative verbs are the least frequent of the four categories in the SCOTUS majority opinions. Nevertheless, their usage in terms of hedging is quite similar to that of the ECHR majority opinions. *Suggest* and *consider* can be either speculative or quotative; in this case, these verbs, when used in a speculative sense, help to diminish author's responsibility for the claim and defend him or her from potential criticism. Another function of these verbs is to express the precise level of commitment to the truth value of the proposition as the author has intended. Consider examples (15) and (16), illustrating typical uses of the speculative *suggest* and *consider*:

(15) *In a denomination that uses the term "minister," conferring that title naturally* ***suggests*** *that the recipient has been given an important position of trust.* (SCOTUS MAJ 7)

(16) *In another sense, information might be* ***considered*** *confidential only if the party receiving it provides some assurance that it will remain secret.* (SCOTUS MAJ 2)

In example (15), the hedge *suggests* is preceded by a boosting adverb *naturally*. Such a construction (i.e. a combination of boosting and hedging) allows the author to choose the level of commitment to the truth value of the proposition in a very precise manner, as the exact choice of a hedge and a booster can either strengthen or downtone the claim. Example (16) shows a typical hedging strategy, used in all four types of judicial opinions analysed in this study: a lexical verb hedge combined with a modal hedge. In this case, the epistemic modal verb *might* further hedges the proposition.

Interestingly, *argue*, *believe*, *doubt*, *indicate* and *speculate* are not used as speculative verbs in the SCOTUS majority opinions, although *argue*, *believe* and *indicate* are present in the quotative category.

Conclude and *assume* were the most frequent deductive verbs in the SCOTUS majority opinions. These two verbs were the most used in the majority opinions of both

courts. It seems that they performed similar functions as well. Consider the following examples:

(17) *Moreover, even **assuming** that the dissent is correct as an empirical matter, its concerns are more properly directed at the regulatory mechanism that Congress put in place to protect this assumed governmental interest.* (SCOTUS MAJ 6)

(18) *Six Members of the Court today **conclude** that Congress has impermissibly favoured debt-collection speech over political and other speech, in violation of the First Amendment.* (SCOTUS MAJ 5)

Example (17) illustrates how the justices emphasize the subjectivity of the dissenting judges; however, they use *assuming* and hedge their statement in order to shield themselves from potential criticism in this indirect dialogue between the majority and the dissent as well as to strengthen their own claim by showing potential flaws in the reasoning of the opposition. In contrast, example (18) shows how majority may construct the argument without reference to the dissenting justices, even though only six out of nine members of SCOTUS voted for the decision. In this case, the dissenting opinions are, in a way, hidden and the majority opinion seems to be at the focal point.

As can be seen in Table 8, the most frequent quotative verbs were *argue*, *suggest* and *contend*. First of all, the difference in distribution of the verbs of this category between the courts is quite striking. In ECHR majority opinions, the quotative *suggest* was not used at all, while SCOTUS majority opinions employ this hedge relatively often. Also, *indicate* is used much less frequently in SCOTUS than in ECHR. Despite these differences, quotative verbs function very similarly in the majority opinions of both courts. The following examples illustrate the usage of *suggest* and *argue* as quotative verbs in the SCOTUS majority opinions:

(19) *The dissent by The Chief Justice (hereinafter the dissent) **suggests** that the Creek's intervening alliance with the Confederacy "unsettled" and "forfeit[ed]" the longstanding promises of the United States.* (SCOTUS MAJ 8)

(20) *Plaintiffs seem to **argue** that Congress must be interested either in debt collection or in consumer privacy.* (SCOTUS MAJ 5)

(21) *In his scholarly separate opinion, Justice Breyer explains how he would apply freedom of speech principles. <…> In essence, therefore, Justice Breyer **argues** for overruling several of the Court's First Amendment cases, including the recent 2015 decision in Reed v. Town of Gilbert, 576 U.S. 155 (2015).* (SCOTUS MAJ 5)

The three examples above show the argumentative nature, prevalent in the judicial opinions of the SCOTUS. Example (19) shows one possible way of how the majority refers to the arguments of the dissenting justices. In this case, the dissent is written by the chief justice of

the SCOTUS John Roberts, and the majority refers to it here without mentioning the name of the dissenting judge, only his position in the court, thus creating a certain distance between him as a person and his claims in the dissenting opinion. In contrast, example (21) shows a reference to a dissenting opinion (here called *separate opinion*) with the dissenting justice named. The name of the justice and the quotative *argue* seem to invoke the image of a disagreement between the majority and the dissenting judge. *Argue* is also used to report on the claims of the plaintiffs and to discuss those claims, as exemplified in (20).

Seem, *see* and *appear* were the most frequent sensorial verbs in the SCOTUS majority opinions. These lexical verb hedges, which, interestingly, are related to vision, were also present in the sub-corpus of the ECHR majority opinions; however, *see* and *seem* were less frequent than in the SCOTUS majority opinions. The functions of these verbs are relatively similar in both ECHR and SCOTUS majority opinions, but there are certain differences. In the SCOTUS majority opinions, *see* is not often used to challenge dissenting opinions. Rather, this verb is more frequently used by the majority to mitigate commitment to the truth value of their own claims. On the other hand, *appear* and *seem* may be used as both a mitigating device as well as a way to challenge dissenting justices. Such indirect discussion with the dissenting judges is not found in the ECHR majority opinions. Consider these examples:

(22) *Still, we do not disregard the dissent's concern for reliance interests. It only* ***seems*** *to us that the concern is misplaced.* (SCOTUS MAJ8)

(23) *Our dissenting colleagues* ***appear*** *to endorse something like this final argument. They* ***seem*** *to agree that the law doesn't demand proof of "substantial" or "competitive" harm, but they think it would be a good idea to require a showing of some harm.* (SCOTUS MAJ 2)

(24) *Must both of these conditions be met for information to be considered confidential under Exemption 4? At least the first condition has to be; it is hard to* ***see*** *how information could be deemed confidential if its owner shares it freely.* (SCOTUS MAJ 2)

Examples (22) and (23) show how *seem* and *appear* are used to challenge the dissent. In both cases, the majority seems to argue that the argumentation provided in the dissenting opinions is flawed. However, in order to save face and to avoid conflict with the dissenting justices, the majority does not make bold claims about the positions of the dissent. Rather, hedges *seem* and *appear* are used to mitigate the claims. Example (24) illustrates how the majority mitigates the commitment to the truth value of its own proposition using the sensorial *see*. Such usage of *see* is quite frequent in the SCOTUS majority opinions, while in the ECHR majority opinions it is practically non-existent.

Overall, it seems worth emphasizing two important differences between the majority opinions of ECHR and SCOTUS. Firstly, the usage of the pronoun *we* differs. The following examples illustrate this difference:

(25) ***The Court*** *observes that on 26 December 2016 the applicants lodged individual applications with the Constitutional Court, which gave its judgments on the merits on 11 January 2018 and on 2 and 3 May 2019.* (ECHR MAJ 6)

(26) *Rather than adopting this test,* ***we*** *focus our inquiry on whether the Departments satisfied the APA's objective criteria, just as* ***we*** *have in previous cases.* ***We*** *conclude that they did.* (SCOTUS MAJ 6)

As exemplified above, justices of the ECHR do not use the pronoun *we* to refer to themselves in the majority opinions. Instead, they prefer to use an impersonal construction, such as *the Court*, when referring to their own views. On the other hand, justices producing the SCOTUS majority opinions tend to employ the pronoun *we* (see examples (17), (19), (21), (22) and (26)). Although one might speculate that it has something to do with the apolitical nature of ECHR in contrast to the fact that SCOTUS is politically charged, it would be difficult to draw any meaningful conclusion solely from the usage of *we*. Secondly, in the SCOTUS majority opinions, the justices discuss and try to counter the arguments provided by the dissent, while the ECHR majority opinions do not mention the dissenting opinions and do not try to counter their argumentation. Example (27) shows a typical response of the majority to the arguments raised by the dissent:

(27) *Justice Gorsuch's well-stated separate opinion makes a number of important points that warrant this respectful response. Justice Gorsuch suggests that our decision provides "no relief" to plaintiffs. Post, at 6. We disagree. Plaintiffs want to be able to make political robocalls to cell phones, and they have not received that relief. But the First Amendment complaint at the heart of their suit was unequal treatment.* (SCOTUS MAJ 5)

3.2.2. Lexical verb hedges in the dissenting opinions

Section 3.2.2. presents the results of the analysis of the dissenting opinions. Firstly, the results of the analysis of the ECHR dissenting opinions will be presented, followed by the analysis of the SCOTUS dissenting opinions and a comparison of them.

3.2.2.1. The European Court of Human Rights

Overall, the frequency of lexical verb hedges in the dissenting opinions of the ECHR is considerably higher than in the majority opinions. Unlike in the majority opinions, where

quotative verbs were the most frequent, the dissenting judges prefer to use speculative verbs more often. Perhaps it is due to the fact that in the dissenting opinions judges usually do not discuss the background of the case in such a detail as in the majority opinions. Also, speculative verbs help the dissenting judges mitigate their statements in order to avoid impolite clashes with the majority and defend their dissent from criticism.

Table 9. Normalized frequencies of lexical verbs used as hedges in the ECHR dissenting opinions, values expressed in tokens per million (TPM).

Speculative	TPM	Deductive	TPM	Quotative	TPM	Sensorial	TPM
argue	134.1	*assume*	187.7	*allege*	455.9	*appear*	590
believe	26.8	*conclude*	402.2	*argue*	187.7	*feel*	53.6
consider	1,019	*deduce*	26.8	*believe*	80.4	*look*	26.8
doubt	26.8	*estimate*	0	*claim*	107.3	*notice*	0
expect	53.6	*evaluate*	0	*contend*	0	*observe*	160.9
indicate	53.6	*infer*	107.3	*indicate*	214.5	*see*	107.3
propose	0	*presume*	53.6	*maintain*	214.5	*seem*	241.3
suggest	214.5	*reason*	107.3	*propose*	53.6	*sense*	0
speculate	0	*suppose*	26.8	*suggest*	241.3	*sound*	0
think	53.6	*surmise*	0	*think*	0	*view*	26.8
Total	**1,582.2**		**911.7**		**1,555.3**		**1,206.7**

As Table 9 shows, by far the most frequent speculative verb in the ECHR dissenting opinions was *consider*, followed by *suggest* and *argue*. These three verbs are often used in the majority opinions as well; however, in the dissenting opinions, they are used to argue against the decisions of the majority and to note the flaws in its argumentation. The following examples illustrate typical uses of *consider*:

(28) *Whilst in the Regner judgment the Court found it sufficient that the Czech courts had the power to assess whether the non-disclosure of classified documents was justified and to order the disclosure of those which did not warrant classification, it seems to* ***consider*** *it necessary in the present case to examine, first, whether an independent authority "is entitled to review the need to maintain the confidentiality of the classified information"* <…> (ECHR DISS 7)

(29) *In line with this trend, we* ***consider*** *that, having chosen to assess the applicant's belief, the national authorities were erroneously rigorous at the initial three tiers of the domestic procedure.* (ECHR DISS 2)

In the ECHR dissenting opinions, two different uses of *consider* emerge. Example (28) shows how the dissenting judge hedges his claim with two hedges: speculative *consider* and sensorial *seems*. Such usage of *consider* is frequent in the ECHR dissenting opinions; however, it seems that it could be included in the quotative category as well, because the dissenting judge reports on the considerations of someone else, in this case the majority.

Another possible use of *consider* is exemplified in (29). The dissenting judges in this case discuss their argumentation and hedge the statement in order to mitigate their commitment to the truth value of the proposition. Interestingly, the dissenting judges of the ECHR use the first person plural pronoun *we*, unlike the majority. Most likely, this is due to the procedural convention of the institutional discourse.

Deductive lexical verbs are the least frequent in the ECHR dissenting opinions; however, they are not as rare as in the majority opinions. *Conclude* and *assume* were the most frequent deductive verbs in this sub-corpus. Consider the examples below:

(30) *We are constrained to* ***conclude*** *that the generalised reasoning of the Frunzenskiy District Court of St Petersburg was baseless and thus arbitrary.* (ECHR DISS 2)

(31) *Even* ***assuming*** *the existence of such a Convention obligation in the narrow terms that it was formulated in the judgment,[6] I find that the respondent State did not comply with it, for the following reasons.* (ECHR DISS 4)

As can be seen in example (30), the dissenting judges, having stated their arguments, follow up with the conclusion of their dissent, similarly to how the majority uses *conclude* to deliver final remarks and the decision in a particular case. In particular, *conclude* is used by the dissenting judges to convey their stance in the ECHR. *Assuming* in example (30) helps the author of the dissent formulate his argumentation and stand in opposition to the European Convention on Human Rights obligation in a certain narrow sense, as formulated in the majority opinion. The deductive verb allows the dissenting judge not only to convey his stance in relation to the interpretation of the Convention by the majority, but also to defend his argumentation from criticism.

The most frequent quotative lexical verb in the ECHR majority opinions is *allege*, followed by *suggest*, *indicate* and *maintain*. The analysis shows that these verbs are used primarily for two reasons: as a reference to either the applicant's position or the majority opinion. Consider these examples:

(32) *That proof could not be adduced by anyone other than the applicant: if an applicant* ***alleged*** *that his or her rights and freedoms had been limited for an improper reason, he or she had to "convincingly show" (a mere suspicion would not do) that the real aim of the authorities was not the same as that proclaimed.* (ECHR DISS 6)

(33) *That the respondent Government have submitted evidence that the interpreter remained at the police station for longer than the applicants* ***suggested****, as is recorded at paragraph 54 of the judgment, does nothing to dispel this concern.* (ECHR DISS 5)

(34) *Contrary to what this judgment* ***suggests****, Khodorkovskiy, while ostensibly conceding the possibility of the "reasonable" admission of contextual evidence of a "hidden agenda",* <...> (ECHR DISS 6)

Examples (32) and (33) illustrate the first function of quotative verbs in the ECHR dissenting opinions; namely, that of referring to the applicant's position. The usage of *suggested* in example (33) stands in contrast to *suggests* in example (34), where the quotative verb is used to refer to the majority opinion rather than to one of the parties to the case.

Appear, *seem* and *observe* were the most frequent sensorial verbs in the ECHR dissenting opinions. *Appear* and *observe* were also found to be very frequently used in the ECHR majority opinions (see Table 7); thus, a particular intra-institutional discourse might have formed within the court, where the discourse community tends to use similar vocabulary. Although it seems compelling to make this argument, it is difficult to draw clear conclusions based on the usage of sensorial verbs alone. The ECHR dissenting opinions use sensorial verbs in a similar manner to the ECHR majority opinions: to mitigate the commitment to the truth value of the proposition and to emphasize subjectivity of the claims. Consider the following example:

(35) *As stated previously, while I would not contest that the applicant's detention may* ***appear*** *formally regular and that other measures had been tried, it is impossible, on the basis of the information in the case file, to conclude that the means chosen were fit for purpose and capable of being judged appropriate for the achievement of the aims pursued.* (ECHR DISS 10)

The dissenting judge in this example opposes the majority's view that the applicant's detention is regular and uses *appear* in order to avoid direct criticism of the decision. Instead, the author emphasizes subjectivity of the majority.

3.2.2.2. The Supreme Court of the United States

The table below presents the frequency of analysed lexical verb hedges from the four categories in the SCOTUS dissenting opinions.

Table 10. Normalized frequencies of lexical verbs used as hedges in the SCOTUS dissenting opinions, values expressed in tokens per million (TPM).

Speculative	TPM	Deductive	TPM	Quotative	TPM	Sensorial	TPM
argue	18	*assume*	161.7	*allege*	53.9	*appear*	179.7
believe	71.9	*conclude*	197.6	*argue*	215.6	*feel*	0
consider	215.6	*deduce*	0	*believe*	125.8	*look*	35.9
doubt	18	*estimate*	0	*claim*	287.5	*notice*	0
expect	71.9	*evaluate*	18	*contend*	125.8	*observe*	287.5
indicate	71.9	*infer*	18	*indicate*	18	*see*	89.8
propose	0	*presume*	0	*maintain*	89.8	*seem*	125.8
suggest	161.7	*reason*	71.9	*propose*	53.9	*sense*	0
speculate	18	*suppose*	71.9	*suggest*	305.4	*sound*	35.9
think	125.8	*surmise*	0	*think*	71.9	*view*	89.8

Total	**772.6**		**539**		**1,347.5**		**844.4**

The results show that quotative verbs were the most frequent, followed by sensorial, speculative and deductive verbs. Surprisingly, the dissenting opinions in the SCOTUS employ speculative verbs less frequently than their counterparts in the ECHR. This could be explained by the politicised nature of the SCOTUS. As the justices of the SCOTUS usually have clear political beliefs (i.e. they are either liberal-leaning or conservative-leaning), they may be more inclined to use a lower amount of mitigated statements in order to better expose the differences in terms of their views in regard to the case. On the other hand, such behaviour usually comes at the expense of politeness and may open up the dissenting justice to more criticism.

Consider, *suggest* and *think* were found to be the most frequently used speculative lexical verbs. It seems that *consider* and *suggest* are employed in the genres of majority and dissenting opinions produced at both courts, because they were found in all four sub-corpora (cf. Tables 7, 8 and 9). Previous studies have found that *consider* and *suggest* are typically used in the SCOTUS majority and dissenting opinions (Vass 2017). *Think* was found to be quite frequent in the SCOTUS dissents; however, it is relatively rare in the ECHR dissenting opinions. Consider the following examples:

(36) *We have come to expect our Presidents to shoulder burdens that very few people could bear, but it is unrealistic to* ***think*** *that the prospect of possible criminal prosecution will not interfere with the performance of the duties of the office.* (SCOTUS DISS 9)

(37) *I agree that the lower courts erred and that these cases must be remanded, but I do not* ***think*** *that the considerations outlined by the Court can be properly satisfied unless the House is required to show more than it has put forward to date.* (SCOTUS DISS 8)

Example (36) shows how the dissenting justice introduces a hypothetical situation using the word *prospect* to explain his argumentation regarding the case and hedges his argument with the speculative verbs *think* in order to emphasize subjectivity of his claim. It seems that such usage of speculative verbs is typical when judges need to mitigate their claims. In contrast, example (37) illustrates how speculative *think* may be used to very strongly convey one's stance. The dissent uses the first person pronoun *I*, thus embracing the claim and establishing a direct connection between the rhetorical act and the person behind it. The dissenting justice clearly stands in opposition to what the majority claims, challenging *the considerations outlined by the Court*.

The most frequent deductive lexical verbs were *conclude* and *assume*. The possible functions of these verbs in the SCOTUS dissents were found to be similar to those in the ECHR dissenting opinions (i.e. to describe a conclusion of the dissent or to refer to what

the majority was saying). However, in the SCOTUS dissents, *conclude* and *assume* are more frequently used to refer to what *the Court* or *the Majority* concludes or assumes in order to question that particular assumption or conclusion, as seen in the following examples:

(38) *Yet today the Court **concludes** that the lands have been a Creek reservation all along—contrary to the position shared for the past century by this Court, the United States, Oklahoma, and the Creek Nation itself.* (SCOTUS DISS 7)

(39) *In this light, the Court has repeatedly **assumed** that any religious accommodation to the contraceptive-coverage requirement would preserve women's continued access to seamless, no-cost contraceptive coverage.* (SCOTUS DISS 5)

Examples (38) and (39) illustrate how the dissenting justices refer to conclusions or assumptions of the majority and construct their argument against the majority's decision. In example (38), the dissent has already provided argumentation on how the majority opinion contrasts with previous positions of the SCOTUS itself as well as the country, the state and the Native American nation.

Suggest, *claim* and *argue* were the most frequent quotative verbs. These verbs can be used to indicate either commitment to what is reported or a lack of it. Consider the following examples:

(40) *The plurality tries to **suggest** a reason by sprinkling its opinion with quotations from venerable sources, but all are far afield.* (SCOTUS DISS 1)

(41) *The President **argues** that he is absolutely immune from the issuance of any subpoena <…> I agree with the majority that the President is not entitled to absolute immunity from issuance of the subpoena. But he may be entitled to relief against its enforcement. I therefore agree with the President that the proper course is to vacate and remand.* (SCOTUS DISS 10)

Example (40) clearly illustrates the opposition of the dissenting justice to the majority opinion by stating that the majority's reasoning is not well grounded. The dissent is strengthened by the verb *tries* as it is implied that the majority failed to provide a reasonable argument. In contrast, example (41) illustrates how the dissent may use a quotative verb to express commitment to what is reported, which is later confirmed by the phrase *I therefore agree with the President*.

Regarding quotative verbs, it seems important to discuss *allege* and *contend* as well. *Allege* is relatively rare in the SCOTUS dissenting opinions as opposed to the ECHR dissenting opinions, where it is the most frequent quotative verb. In contrast, *contend* is used somewhat frequently in the SCOTUS dissents, while it was not found at all in the ECHR dissents. In both courts, these verbs are usually used to refer to a certain point in the majority opinion, as seen in the following example:

(42) *The majority believes that Goodyear is inapposite because of the nature of the domain name system. Because only one entity can hold the contractual rights to a particular domain name at a time, it* ***contends****, consumers may infer that a "generic.com" domain name refers to some specific entity.* (SCOTUS DISS 4)

In terms of sensorial verbs, the ECHR and the SCOTUS dissenting opinions are quite similar. Dissenting justices at both courts employ mostly *observe*, *appear*, *seem* and *see*. The dissent usually uses these verbs to discredit the majority's reasoning, as seen in the examples below:

(43) *As judges, we may be sorely tempted to "rationalize" the law and impose our own free-trade rules for all goods and services in interstate commerce. Certainly, that temptation* ***seems*** *to have proven nearly irresistible for this Court when it comes to alcohol.* (SCOTUS DISS 2)

(44) *Today and for the first time, the Court claims to have discovered a duty and power to strike down laws like these as unconstitutional. Respectfully, I do not* ***see*** *it.* (SCOTUS DISS 2)

Example (43) shows how the dissent attempts to discredit the majority's argumentation by implying that the justices themselves sometimes interpret the law too broadly and 'impose their own rules'. However, this claim would probably be too confrontational, thus the dissenting judge decided to hedge the statement firstly with the modal verb *may* and then in the next sentence with the sensorial lexical verb *seems*. Example (44), in turn, illustrates an interesting case of how the dissent conveys its stance regarding the majority's claims with the usage of both *see* and an adverb *respectfully* as hedging devices.

It seems that overall the language of the SCOTUS dissenting opinions is more confrontational as opposed to the ECHR dissents, and the lower amount of speculative verbs in the SCOTUS dissents could be an indicator of more bold claims being made in the process of opposing the views of the majority. The more frequent usage of the first person pronouns *I* and *we* while conveying stance in the SCOTUS dissenting opinions also points to the confrontational nature of this court. Despite these apparent differences, it would be hard to draw any robust conclusions on whether the language of the dissenting opinions differs due to the fact that the SCOTUS is a domestic court while the ECHR is an international one. However, the differences could perhaps be explained by the politicized structure of the SCOTUS.

3.3. Functional analysis of lexical verb hedges

Section 3.3. presents the functional analysis and provides selected examples of hedges. The table below shows the frequency of lexical verb hedges in four subcorpora in terms of the functions they perform.

Table 11. Frequency of hedges performing four main functions, values expressed in tokens per million.

	Shielding the author	Emphasizing subjectivity	Showing (lack of) commitment	Conveying stance
ECHR Maj.	1,207.6	1,201.3	784	986.3
SCOTUS Maj.	1,396.5	970.8	1,328.4	834.5
ECHR Diss.	1,474.9	1,153.1	1,153.1	1,474.9
SCOTUS Diss.	772.6	592.9	970.2	1,149.9
Total	**4,851.6**	**3,918.1**	**4,235.7**	**4,445.6**

Table 11 shows that the most frequently lexical verb hedges in the analysed judicial opinions were used in order to shield the author. Hedges were also used to convey stance, show commitment to the truth value of the proposition or the lack thereof and, finally, to emphasize subjectivity. As Hyland (1998) points out, lexical verbs represent "the most transparent means of coding the subjectivity of epistemic sources and are generally used to hedge either commitment or assertiveness" (Hyland 1998:119–120).

Unsurprisingly, lexical verb hedges are most frequently used in order to shield the author from criticism and potentially opposing views. As can be seen in Table 11, lexical verbs hedges performing this function in the majority opinions produced at both courts are more frequent than hedges performing other functions. In contrast, the ECHR dissenting opinions use hedges to shield the authors as often as to convey stance, while the SCOTUS dissenting opinions draw on hedges for the possibility to shield the authors less frequently than for other reasons. Overall, lexical verb hedges seem to be very useful when the authors need to shield themselves from potential criticism, as seen in the sentences below:

(45) *Moreover, the arguments used by the majority to support their assertion – unprecedented in the Court's case-law – that the situation of a stable homosexual couple is not comparable to that of a stable heterosexual couple* ***appear*** *unconvincing.* (ECHR DISS 9)

(46) *In other words, there is nothing in the file to* ***suggest*** *that any verification was actually carried out by the national courts as to the credibility and veracity of the facts submitted to them by the public prosecutor's office.* (ECHR MAJ 7)

In both (45) and (46) the authors use hedges in order to shield themselves from criticism. However, it has to be mentioned that the boundary between this function and the function of

showing commitment to the truth value of the proposition or the lack thereof is rather fuzzy and sometimes these two functions merge together. The examples (45) and (46) illustrate how the authors are able to use hedges in order to express lack of commitment to the truth value of the proposition as well as to shield themselves from potential opposition.

The function of emphasizing subjectivity was the least frequent out of four. Usually, it is used either by dissenting justices to emphasize the subjectivity of the majority or by the majority to respond to the dissent or to express doubt regarding the statements of some third parties. Consider the following examples:

(47) *They **maintained** that only one person from their group had been questioned by the police and that the others had merely been handed documents in Slovak for them to sign, having been told that they would be taken to a reception centre for asylum seekers; thus, the obstacles to their expulsion and the risk of their indirect refoulement to Afghanistan where they feared prosecution had not been examined.* (ECHR MAJ 8)

(48) *The Court **suggests** that Congress sought to "tiptoe to the edge of disestablishment," fearing the "embarrassment of disestablishing a reservation" but hoping that judges would "deliver the final push." Ante, at 7. This is fantasy.* (SCOTUS DISS 7)

Examples (47) and (48) illustrate how justices distance themselves from the claims made by someone else and emphasize that these claims are subjective. The dissenting opinion (48) is especially striking in this regard as it not only uses the quotative verb *suggests* to emphasize the subjectivity of the majority but also follows up with calling the majority's argumentation 'fantasy'. It is one of the examples illustrating the confrontational nature of the SCOTUS dissenting opinions that has been discussed in Section 3.2.2.2.

Finally, hedges which enable the author to convey stance were most frequent in dissenting opinions. The ECHR dissenting opinions employed hedges for the purpose of conveying stance in a less confrontational manner than their SCOTUS counterparts, albeit more frequently. The following examples illustrate typical uses of hedges to convey stance:

(49) *But this vague statement is no easier to comprehend today than it was when the Court declined to adopt it eight years ago. It certainly does not **sound** like a legal framework.* (SCOTUS DISS 6)

(50) *The road has been long, but we have arrived at the specific question now before us: whether enforcing the Policy Requirement against respondents' clearly identified foreign affiliates violates respondents' own First Amendment rights. Like the District Court and the Court of Appeals, I **believe** the answer is yes.* (SCOTUS DISS 3)

(51) *Although the majority do not find it necessary to pursue this line of reasoning, I **feel** that I have the ethical obligation to do so, for the sake of both the consistency of the case-law and the exhaustiveness of the legal analysis of the case.* (ECHR DISS 4)

In (50) and (51) the dissenting justice conveys stance very clearly and uses the first person pronoun *I* to minimize the distance between the author and the utterance. Such uses of hedges are frequent in dissenting opinions due to the need to oppose the majority and establish the dissent's own position in regard to the issue at hand. In contrast, example (49) shows how the dissent may convey stance by using negation of the sensorial verb *sound*. Overall, it seems that all four functions of lexical verb hedges are used in majority and dissenting opinions produced at both the ECHR and the SCOTUS.

4. Conclusions

The purpose of this study was to determine which lexical verbs are used as hedges in the majority and dissenting opinions produced at the ECHR and the SCOTUS as well as compare the hedges used in the judicial opinions from both courts and discuss the functions they perform. This study also attempted to determine whether certain hedging patterns could be attributed to the fact that the SCOTUS is a domestic court while the ECHR is an international court. In order to achieve these goals, quantitative and qualitative methods of analysis were applied.

The quantitative analysis showed that the ECHR majority opinions tend to be much longer than the SCOTUS majority opinions as well the dissenting opinions from both courts. In contrast, the SCOTUS majority opinions turned out to be of similar length to the dissenting opinions. Quantitative analysis also demonstrated that the language of the ECHR majority opinions is more formulaic compared to the language of the ECHR dissenting opinions as well as both the majority and dissenting opinions of the SCOTUS. One possible explanation for this finding could be the use of 'Euro-English' (Biel, Biernacka & Jopek-Bosiacka 2018) in the ECHR, which could be why such a large international institution tends to overuse certain phrases. However, more research needs to be carried out to prove that this is indeed the case.

The quantitative analysis also showed that the ECHR dissenting opinions tend to use lexical items from the list of potential hedges (see Table 2) more frequently the SCOTUS majority opinions. This difference in frequency was found to be statistically significant (log-likelihood = 4.23; $p < 0.05$). It could be explained by the political nature of the SCOTUS, as opposed to the usually apolitical environment, where there is more of a need for lexical items potentially mitigating the claims, especially when a judge decides to dissent and write a dissenting opinion.

The study found that some lexical items from the list of potential hedges were not present in the corpus of judicial opinions (e.g. *surmise*), while others were present but not used as lexical verb hedges (e.g. *estimate*, *notice* and *sense*). It seems that the list of potential hedges, provided in previous research (Hyland 1998), could be either extended by adding other verbs or changed by selecting other verbs instead of the unused ones. Regarding *surmise*, *estimate* and *sense*, this study supports the findings of Vass (2017), who also found that these verbs were seldom used as hedges in legal discourse.

The qualitative analysis showed that quotative lexical verb hedges are the most frequent in the majority opinions of the ECHR and the SCOTUS, followed by speculative

verbs in the case of the ECHR and by deductive verbs in the case of the SCOTUS. Majority opinions have to solve a dispute between two parties, and at the same time instruct future courts faced with similar cases. It was found that speculative verbs aid in mitigating the claims and defending the justices from criticism, while quotative verbs allow them to balance opinion and fact of other sources of information.

The ECHR dissenting opinions most frequently employ speculative and quotative verbs, similarly to the majority opinions, while the SCOTUS dissenting opinions tend to use quotative and sensorial verb hedges more often than the verbs of other categories. The dissenting opinions often focused on what the majority's argumentation was and tried to disprove it. The lexical verb hedges very often allowed dissenting judges to weaken the majority's view in order to strengthen their own claims.

The functional analysis of the judicial opinions showed that authors tend to use hedges most frequently in order to shield themselves from criticism. Other than that, the majority opinions often employed hedges to emphasize the subjectivity of either the dissent of a party to the case, as well as to show commitment to the truth value of their own proposition or a lack thereof. In contrast, the dissenting judges preferred to use hedges to convey stance. This could be explained by the need for the dissent to oppose the views of the majority.

The present study largely confirms the findings from earlier research (Vass 2015; Vass 2017), as it demonstrated that lexical verb hedges are very important in the formulation of arguments in the majority and dissenting opinions. It seems that the discourse communities of the ECHR and the SCOTUS have adopted different commonly used hedging techniques; however, it is difficult to draw conclusions on the exact causes of these differences. This study could be of great help to law students and legal practitioners who want to learn the ways in which justices construct arguments in judicial opinions. It may also aid translators, especially working in international courts, such as the ECHR, in translating hedged statements to foreign languages. Further research could analyse more judicial opinions, which would allow for a more comprehensive analysis. Also, future studies may compare the judicial opinions produced at the ECHR and the SCOTUS to those produced at other courts of law.

Data sources

The European Court of Human Rights judicial opinions. 2019–2020. Available at: https://hudoc.echr.coe.int/eng

The Supreme Court of the United States judicial opinions. 2019–2020. Available at: https://www.supremecourt.gov/opinions/opinions.aspx

References

Abbuhl, R. 2006. Hedging and boosting in advanced-level L2 legal writing: the effect of instruction and feedback, in Byrnes, H., Weger-Guntharp, H. D. & K. Sprang (eds), *Educating for Advanced Foreign Language Capacities: Constructs, Curriculum, Instruction, Assessment*. Washington: Georgetown University Press.

Anthony, L. 2018. AntConc (Version 3.5.7). Available at: http://www.laurenceanthony.net/software/antconc/

Bhatia, V. K., Langton, N. & J. Lung. 2004. Legal discourse: opportunities and threats for corpus linguistics, in Connor, U. & T. Upton (eds), *Discourse in the Professions: Perspectives from Corpus Linguistics*. Amsterdam: John Benjamins.

Biber, D. & E. Finnegan. 1989. Styles of stance in English: lexical and grammatical marking of evidentiality and affect. *Text* 9 (1):93–124.

Biel, L., Biernacka, A. & A. Jopek-Bosiacka. 2018. Collocations of terms in EU competition law: a corpus analysis of EU English collocations, in Marino, S., Biel, L., Bajčič, M. & V. Sosoni (eds), *Language and Law*. Cham: Springer.

Bondi, M. 2012. Voice in textbooks: between exposition and argument, in Hyland, K. & C. S. Guinda (eds), *Stance and Voice in Written Academic Genres*. London: Palgrave Macmillan.

Breeze, R. 2016. Balancing neutrality and partiality in arbitration: discursive tensions in separate opinions. *Text & Talk* 36: 363–389.

Burrough-Boenisch, J. 2005. NS and NNS scientists' amendments of Dutch scientific English and their impact of hedging. *English for Specific Purposes* 24(1): 25–39.

Cheng, W. & L. Cheng. 2014. Epistemic modality in court judgments: a corpus-driven comparison of civil cases in Hong Kong and Scotland. *English for Specific Purposes* 33: 15–25.

Clemen, G. 1997. The concept of hedging: origins, approaches and definitions, in Markkanen, R. & H. Schroder (eds), *Hedging and Discourse*. Berlin: Walter de Gruyter.

Conrad, S. & D. Biber. 2000. Adverbial marking of stance in speech and writing, in Hunston, S. & G. Thompson (eds), *Evaluation in Text: Authorial Stance and the Construction of Discourse*. Oxford: OUP. 56–73.

Epstein, L., Landes, W. M. & R. A. Posner. 2011. Why (and when) judges dissent: A theoretical and empirical analysis. *Journal of Legal Analysis* 3: 101–137.

Fanego, T. & P. Rodriguez-Puente (eds). 2019. *Corpus-based Research on Variation in English Legal Discourse*. Amsterdam: John Benjamins.

Fraser, B. 2010. Pragmatic competence: the case of hedging, in Kaltenbock, G., Mihatsch, W. & S. Schneider (eds), *New Approaches to Hedging*. Bingley: Emerald.

Gross, A.G. & P. Chesley. 2012. Hedging, stance and voice in medical research articles, in Hyland, K. & C. S. Guinda (eds), *Stance and Voice in Written Academic Genres*. London: Palgrave Macmillan.

Hafner, C. A. 2014. Stance in a professional legal genre: the barrister's opinion, in Breeze, R., Gotti, M. & C. S. Guinda (eds), *Interpersonality in Legal Genres*. Bern: Peter Lang.

Hinkle, R. K., Martin, A. D., Shaub, J. D. & E. Tiller. 2012. A positive theory and empirical analysis of strategic word choice in district court opinions. *Journal of Legal Analysis* 4: 407–444.

Hunston, S. & G. Thompson. 2000. *Evaluation in Text: Authorial Stance and the Construction of Discourse*. Oxford: OUP.

Hyland, K. & F. Jiang. 2018. "In this paper we suggest": changing patterns of disciplinary metadiscourse. *English for Specific Purposes* 51: 18–30.

Hyland, K. 1998. *Hedging in Scientific Research Articles*. Amsterdam: John Benjamins.

Hyland, K. 2003. Genre-based pedagogies: a social response to process. *Journal of Second Language Writing* 12: 17–29.

Hyland, K. 2005. Stance and engagement: a model of interaction in academic discourse. *Discourse Studies* 7(2): 173–192.

Hyland, K. 2009. *Academic Discourse: English in a Global Context*. London: Continuum.

Hyland, K. 2012. Undergraduate understandings: stance and voice in final year reports, in Hyland, K. & C. S. Guinda (eds), *Stance and Voice in Written Academic Genres*. London: Palgrave Macmillan.

Kahn, M. A. 1995. The appointment of a Supreme Court Justice: a political process from beginning to end. *Presidential Studies Quarterly* 5(1): 25–41.

Kurzon, D. 2001. The politeness of judges: American and English judicial behaviour. *Journal of Pragmatics* 33(1): 61–85.

Martin, James R. & Peter R. R. White. 2005. *The Language of Evaluation*. New York: Palgrave.

Mauranen, A. 1997. Hedging and modality in revisers' hands, in Markkanen, R. & H. Schroder (eds), *Hedging and Discourse*. Berlin: Walter de Gruyter.

Mazzi, D. 2010. "This argument fails for two reasons…": a linguistic analysis of judicial evaluation strategies in US Supreme Court judgments. *International Journal for the Semiotics of Law – Revue Internationale de Semiotique Juridique* 23: 373–385.

Mazzi, D. 2014. "The words are plain and clear…": on interpersonal positioning in the discourse of judicial interpretation, in Breeze, R., Gotti, M. & C. S. Guinda (eds), *Interpersonality in Legal Genres*. Bern: Peter Lang.

McGrath, L. & M. Kuteeva. 2012. Stance and engagement in pure mathematics research articles: linking discourse features to disciplinary practices. *English for Specific Purposes* 31(3): 161–173.

Namsaraev, V. 1997. Hedging in Russian academic writing in sociological texts, in Markkanen, R. & Schroder, H. (eds), *Hedging and Discourse: Approaches to the Analysis of a Pragmatic Phenomenon in Academic Texts*. Berlin: Walter de Gruyter.

Palmer, F. R. 1986. *Mood and Modality*. Cambridge: CUP.

Patrick, J. J., Pious, R. M. & D. A. Ritchie. 2001. *The Oxford Guide of the United States Government*. Oxford: OUP.

Poos, D. & R. Simpson. 2002. Cross-disciplinary comparisons of hedging, in Reppen, R., Fitzmaurice, S. & D. Biber (eds), *Using Corpora to Explore Linguistic Variation*. Amsterdam: John Benjamins.

Sala, M. 2014. Interpersonal and interactional markers in legal research articles, in Breeze, R., Gotti, M. & C. S. Guinda (eds), *Interpersonality in Legal Genres*. Bern: Peter Lang.

Salager-Meyer, F. 1997. I think that perhaps you should: a study of hedges in written scientific discourse, in Miller, T. (ed), *Functional Approaches to Written Texts: Classroom Applications*. Washington: United States Information Agency English Language Programs.

Silver, M. 2003. The stance of stance: a critical look at ways stance is expressed and modelled in academic discourse. *Journal of English for Academic Purposes* 2(4): 359–374.

Smith, R. K. M. & C. van der Anker. 2005. *The Essentials of Human Rights*. London: Hodder Arnold.

Tessuto, G. 2011. Legal problem question answer genre across jurisdiction and cultures. *English for Specific Purposes* 30: 298–309.

Thompson, P. 2012. Achieving a voice of authority in PhD theses, in Hyland, K. & C. S. Guinda (eds), *Stance and Voice in Written Academic Genres*. London: Palgrave Macmillan.

Toska, B. 2012. Epistemic hedges and boosters as stance markers in legal argumentative discourse. *Topics in Linguistics* 10: 57–62.

Tse, P. 2012. Stance in academic bios, in Hyland, K. & C. S. Guinda (eds), *Stance and Voice in Written Academic Genres*. London: Palgrave Macmillan.

van Geel, G. 2001. *Understanding Supreme Court Decisions*. London: Longman.

Vass, H. 2017. Lexical verb hedging in legal discourse: the case of law journal articles and Supreme Court majority and dissenting opinions. *English for Specific Purposes* 48: 17–31.

Vass, H. 2015. The Role of Hedging in Balancing Power and Persuasion in the Judicial Context: The Case of Majority and Dissenting Opinions, in Angeles Orts, M., Breeze, R. & M. Gotti (eds), *Power, Persuasion and Manipulation in Specialised Genres: Providing Keys to the Rhetoric of Professional Communities*. Bern: Peter Lang. 137–162.

Wierzbicka, A. 1990. The semantics of emotions: fear and its relatives in English. *Australian Journal of Linguistics* 10(2): 359–375.

Summary in Lithuanian

Pastaruosius kelis dešimtmečius lingvistikoje autoriaus pozicija yra itin dažnai tyrinėjamas reiškinys. Vis dėlto, tai neturėtų stebinti, nes šis fenomenas apima ne tik autoriaus pritarimą, prieštaravimą, pagyras ar kritiką tam tikroms idėjoms, bet ir tai, kaip autorius teksto pagalba bendrauja su savo skaitytojais (Martin & White 2005). Autoriaus pozicija taip pat yra itin svarbi profesinėse bendruomenėse, nes būtent šis reiškinys padeda rašytojams palaikyti glaudesnį tarpusavio ryšį ir efektyvesnį bendravimą profesinio diskurso bendruomenėje, kurioje dažnai būna nusistovėjusios tam tikros rašymo normos.

Autoriaus poziciją sudaro keletas smulkesnių reiškinių, iš kurių vienas svarbiausių yra apsidraudimai (angl. hedging). Apsidraudimus tekstų autoriai įprastai vartoja, kad išreikštų abejonę dėl pateikiamų teiginių ir tikslų pasitikėjimo tokiais teiginiais lygį. Apsidraudimai taip pat vartojami siekiant pristatyti tam tikrą teiginį kaip nuomonę, o ne faktą, ir išvengti potencialios kritikos. Be kita ko, apsidraudimai yra itin svarbūs ir teismų diskurse, nes net nedideli kalbos niuansai gali iš esmės pakeisti bylos eigą. Taigi, kaip rodo ankstesni tyrimai, teisėjai ypač dažnai vartoja apsidraudimus, taip siekdami ne tik išvengti tiesioginės kritikos, bet ir apsidrausti nuo galimų klaidų sprendžiant bylos baigtį (Hinkle et al. 2012; Mazzi 2014; Vass 2017).

Šiuo tyrimu siekta išnagrinėti apsidraudimus Europos Žmogaus Teisių Teismo (EŽTT) ir Jungtinių Amerikos Valstijų Aukščiausiojo Teismo (JAV AT) daugumos ir atskirosiose nuomonėse. Taip pat siekta palyginti apsidraudimų vartojimą, jų dažnumą ir jų atliekamas funkcijas minėtuose teismo dokumentuose. Darbe keliama hipotezė, kad EŽTT teisėjai yra linkę vartoti daugiau apsidraudimų, nes šis teismas yra tarptautinis, taigi, yra didesnė kultūrinių nesusipratimų ir iš to kylančios kritikos tikimybė. Kita vertus, keliama hipotezė, kad JAV AT teisėjai gali sau leisti rašyti labiau tiesmukiškai, nes JAV AT turi itin gilią politinio pasidalijimo į dvi – konservatyviąją ir liberaliąją – stovyklas tradiciją, todėl mažesnis vartojamų apsidraudimų skaičius nebūtų nesuprastas. Tyrime naudota po 10 daugumos ir atskirųjų nuomonių iš abiejų nagrinėtų teismų (iš viso – 40).

Gauti tyrimo rezultatai patvirtino iškeltą hipotezę – JAV AT teisėjai iš tiesų vartoja apsidraudimus rečiau nei EŽTT teisėjai. Funkcinė apsidraudimų analizė taip pat atskleidė, kad atskirosiose nuomonėse tiek EŽTT, tiek ir JAV AT teisėjai apsidraudimus dažniau vartoja tam, kad išreikštų savo poziciją, kuri neretai būna gana griežta. Tuo tarpu daugumos nuomonėse teisėjai apsidraudimus dažniausiai vartoja kaip priemonę apsisaugoti nuo galimos kritikos ir sušvelninti savo arba bylos dalyvių teiginius. Darbe taip pat pateikiamos galimos tyrimo rezultatų praktinio panaudojimo sritys.

Appendix 1. The list of cases of the SCOTUS.

Rotkiske v. Klemm, 589 U.S. ___ (2019)

United States v. Haymond, 588 U.S. ___ (2019)

Trump v. Vance, 591 U.S. ___ (2020)

Trump v. Mazars USA, LLP, 591 U.S. ___ (2020)

McGirt v. Oklahoma, 591 U.S. ___ (2020)

Our Lady of Guadalupe School v. Morrissey-Berru, 591 U.S. ___ (2020)

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 591 U.S. ___ (2020)

Barr v. American Association of Political Consultants, Inc., 591 U.S. ___ (2020)

Patent and Trademark Office v. Booking.com B.V., 591 U.S. ___ (2020)

Agency for International Development v. Alliance for Open Society International, Inc., 591 U.S. ___ (2020)

Appendix 2. The list of cases of the ECHR.

Asady and Others v. Slovakia, 24917/15 (2020)

Dyagilev v. Russia, 49972/16 (2020)

Cwik v. Poland, 31454/10 (2020)

Fernandes de Oliveira v. Portugal, 78103/14 (2019)

Sabuncu and Others v. Turkey, 23199/17 (2020)

Muhammad and Muhammad v. Romania, 80982/12 (2020)

Handzhiyski v. Bulgaria, 10783/14 (2020)

M.K. and Others v. Poland, 40503/17, 42902/17, 43643/17 (2020)

Tadeucci and McCall v. Italy, 51362/09 (2019)

D.L. v. Bulgaria, 7472/14 (2019)