First session – Sex, Gender and Non-binarism

- **Ekaterina Yahyaoui** (University of Galway) – *Sex, Gender, and Women in International Human Rights Law: What's in a Name?*
  This presentation problematises the current understanding of sex and gender in international human rights law, especially as it manifests itself in its treatment of the 'women' category. The problematic nature of the current state of international human rights law in this regard came recently to light in two cases: the majority judgment in the *Y v France* case of the European Court for Human Rights and the dissenting opinions in the *Vicky Hernández* case of the Inter-American Court of Human Rights. Arguments and statements emerging from these two authoritative recent sources coming from two arguably progressive jurisdictions exemplify continuing inadequacies of the dominant approach. Through a critical engagement with these arguments, supplemented by the discussion of the broader framework of international human rights law, the article not only points out the precise nature of the existing shortcomings but also formulates strategies for overcoming them.

- **Pieter Cannoot** (University of Ghent) – *Y v France: ECtHR Stuck between Subsidiarity and Effective Human Rights Protection for Non-binary/intersex Persons*
  Over the past two decades, the European Court of Human Rights (ECtHR) has been instrumental in advancing the recognition and protection of the fundamental rights of individuals whose sex and/or gender does not align with traditional binary norms. The Court's jurisprudence has become particularly significant as LGBTQI individuals face growing hostility across various Council of Europe member states. Although some countries have embraced gender self-determination and reformed their legal frameworks for sex registration, others have witnessed heated public debates fueled by an organized anti-gender movement linked to authoritarian ideologies. Despite the importance of national discretion in reforming sex/gender registration systems, the ECtHR's continuous limited engagement with the deeper and stereotypical legal constructs of sex and gender is disappointing. While judicial restraint is warranted in politically and morally sensitive areas, the Court must ensure that this does not lead to a retreat from

effectively protecting the rights of vulnerable groups, particularly LGBTQI individuals. In this light, this paper provides an analysis of how the ECtHR's lack of proper engagement with persistent gendered legal stereotypes in its judgment in *Y. v France* (2023), ultimately results in requiring non-binary persons to comply with cisnormative majority expectations regarding their legal interests.

- **Ina Opartyová** (University of Groningen) – *The Concept of a Woman in CJEU Fundamental Rights Discourse*
  The Court of Justice of the EU (CJEU) is often thought of as being more progressive than the European Court of Human Rights in applying notions of sex and gender and developing its human rights case law accordingly. Nevertheless, by analysing its case law, it becomes obvious not only that women are still framed as "the other" in the EU human rights discourse but also that the concept of woman itself, as formed by the CJEU, remains quite rigid and exclusionary.
  The CJEU seems to endorse an essentialist idea of a woman, which is further reinforced through its judgements and the sex/gender dichotomy that it strengthens. This issue is particularly relevant as it reproduces existing gender biases and stereotypes, engraining them within the system. For example, as seen in the *Richards v Secretary of State for Work and Pensions*, the Court is ready to accept that the concept of a woman also includes trans women who have undergone gender reassignment surgery. Nevertheless, this poses a question of whether the only "proper" woman is one whose sex aligns with her gender. Such an issue is already seen in the narrative of the case, where the Court makes it obvious that it is only accepting her gender change after her surgery (as seen in paragraph 28 of the judgement). Moreover, in the infamous case law on headscarf bans, such as *OP v Commune d'Ans* or *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, the CJEU contributes to further othering of Muslim women and women of colour by not granting them the same protection and autonomy as it does for white working women. While the CJEU has accepted the validity of same-sex marriages and life partnerships (*Coman; Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*), it was not so long ago that it ruled in *Lisa Jacqueline Grant v South-West Trains Ltd.* that a stable relationship of two lesbian partners cannot be regarded as equal to that of a heterosexual couple. The language of this ruling clearly points towards the fact that to fall under the protected category of a woman, the subject is expected to be in a heterosexual relationship.

Therefore, the aim of this paper is to formulate a holistic analysis of the notion of a woman in EU human rights law based on the CJEU judgements. This research will be conducted through an empirical analysis of the case law of the CJEU pertaining to the Charter of Fundamental Rights
and EU directives on non-discrimination in which the notions of sex and gender play a central role. Based on the study, the article will analyse what is a woman from the perspective of the CJEU, applying a feminist and queer analysis of law through methods such as sexing the subject of law. Paying attention to the language and narratives used by the Court, this paper will strive to reveal its hidden underlying assumptions about what a woman is and challenge its neutrality.

- **Jekaterina Nikitina, Letizia Paglialunga** (University of Milan) – *Identity Re-framed: Legal and Linguistic Perspectives on Binary Transitions in the European Human Rights Discourse*

  The European Convention on Human Rights (ECHR or Convention), protecting human rights since 1953, has been repeatedly conceptualized as "a living instrument which [...] must be interpreted in the light of present-day conditions" (*Tyrer v. UK*, 1978, para. 31). Its provisions "are drafted in a general and ambiguous way, and one of the Court's most important functions is therefore to specify the content of the ECHR by weighing and balancing the counterweighing considerations" (Agha 2017: 6). Article 8 ECHR (right to respect for private and family life) is one the most versatile provisions, extending nowadays to cases of surveillance or data collection, environment, in vitro fertilization, surrogacy as well as gender issues. Against an apparent lack of treaty-internal categorizations of gender issues, the European Court of Human Rights (ECtHR or Court) has generated extensive case-law dealing with different aspects of gender issues. This research examines the discursive framing of transsexuality and transgenderism and their legitimization in judgments issued by ECtHR with a specific focus on female-to-male, and male-to-female transition cases. As the Court engages in legal reasoning, bridging the legislative gaps, it inevitably makes framing choices in explaining its position. The study draws on Entman's (1993) concept of framing as the core analytical framework, understood here as the selection and foregrounding of certain aspects of reality to promote a particular view of the situation, its interpretation or evaluation. The aim of this work is to assess how the ECtHR frames issues related to transsexuality – both male-to-

female and female-to-male – through legal discourse, and to see whether there are any divergent or convergent framing choices depending on the direction of the gender transition. To this end, we have compiled an ad hoc corpus of 18 judgments issued in English and dealing with gender identity and transsexuality (8 M-to-F cases, and 10 F-to-M cases). The present research integrates a corpus-based approach by employing the SketchEngine (Kilgarriff, 2004) software. A combined methodological framework of Corpus Linguistics and Discourse Analysis (CADS, Gillings, Mautner & Baker 2023) is used to identify potentially relevant lexical items that could function as frames and to assess their discursive roles, when these are related to the legitimization of transgender and transsexual identity. Through this analysis, we aim to uncover recurrent lexical patterns and identify frames present in the judicial discourse to determine how the Court constructs and legitimizes the identity and rights of transgender individuals. Preliminary results indicate a distinction in the framing of transsexuality based on the direction of the transition. In female-to-male (F-to-M) cases, there is a high frequency of medical language related to reproduction (e.g. *sterilisation*, *sterility*, *procreate*). This reflects a focus on reproductive rights and medical interventions and seems to emphasize the biological frame of transitioning. In contrast, male-to-female (M-to-F) cases are more frequently framed within the context of family and relationships, with keywords such as “partner”, “mother” and “parent” dominating the discourse in these judgements. This seems to suggest that the Court’s framing of M-to-F transsexuality often centers on social and familial roles, which foregrounds the relational aspects of gender identity.

Second Session – Stereotyping in Reproductive and Parental Rights

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- **Cristina Luzzi** (Sant’Anna School of Advanced Studies, Pisa) – *The Ambiguous Liberation of Female Bodies in (and around) Constitutional Jurisprudence*
  - Italian Constitutional jurisprudence about abortion (Judgements N. 27/1975, 35/1997)
  - The balancing between the parental’s right to health and the interest/right of the unborn child to live.

- From the Constitutional Jurisprudence to the Law n. 194/1978. The "medicalization" of the abortion and its consideration as a last resort.
- The ISTAT Reports on the Abortion Act and the stereotypes about pregnant persons' behaviours.

- **Marianna Iliadou** (University of Sussex) – *Surrogates, Gender Stereotypes and the ECtHR*

  Surrogacy is a valued method of family formulation for many people, particularly for the creation of alternative families. The debate surrounding surrogacy, however, is highly polarised, with some welcoming it as a progressive method of assisted reproduction, while others oppose it fervently, highlight the potential of exploitation and commodification of both women and children. Opponents of surrogacy often invoke gender stereotypes to object to surrogacy practices, with two main stereotypes being that surrogates inherently desire motherhood of the children they birth, and that surrogates are vulnerable beings needing protection, unable to make freely make the decision to become surrogates. These stereotypes are also evident in case law, such as judgments of the European Court of Human Rights on surrogacy. This paper first clarifies key concepts about surrogacy, including important conventional distinctions between altruistic and commercial surrogacy, as well as gestational and traditional surrogacy. It then explores relevant literature on gender stereotyping and surrogacy to address two main ideas: first, the notion that surrogates, as all women, inherently wish to be mothers; and second, the perception of surrogates as vulnerable individuals who need protection from exploitation. By engaging with existing literature, the paper examines how these stereotypes manifest in societal attitudes and even legal frameworks. Special emphasis is given to the way surrogates are often depicted as self-sacrificing women fulfilling a natural maternal instinct, in cases of altruistic surrogacy, with the contrasting imagine of a cold-hearted baby-seller in cases of commercial surrogacy. Additionally, the paper delves into the stigmatisation and moral judgments faced by surrogates, and the harm this stigmatisation creates. Finally, the paper explores case law from the European Court of Human Rights on surrogacy, highlighting traces of these gender stereotypes in judicial decisions. By critically analysing these judgments, the paper calls for a re-evaluation of legal approaches to surrogacy that move beyond gendered assumptions and better protect the rights and autonomy of all parties involved.

- **Sophie Girardini** (University of Cologne) – *What is a "Good Mother" and What a "Bad Mother"? Analysing the ECtHR Approach to Compounded Stereotypes on Motherhood*

  The European Court of Human Rights (ECtHR), sometimes referred to as "the conscience of Europe", regularly decides on women's parental rights in human rights cases brought before it. Under Article 8 of the European Convention on Human Rights (ECHR), the right to family life, and sometimes under Article 14 ECHR, the right to enjoy the Convention rights without discrimination, the Court discusses the rights of women in custody proceedings, adoption proceedings or in relation to care orders made by local authorities. In doing so, the Court contributes to current legal debates and the construction of different notions of "motherhood" in our modern-day European societies and related issues of discrimination. While some gender aspects of parental rights cases have been discussed by scholars, this paper analyses the Court's notion of "motherhood" when it comes to women from minority backgrounds who do not fulfil traditional Western norms and expectations of motherhood. More specifically, it asks: In which manner does the Court approach harmful and wrongful stereotypes of "motherhood" when it comes to mothers that come from non-dominant groups? What can the Court do to "name and shame", and subsequently dismantle and eliminate stereotypes of "good mothers" or "bad mothers" within it's jurisprudence in this regard? An analysis of intersectional and compounded stereotypes emerging from the language of national authorities and possibly the Court itself in parental rights jurisprudence is currently missing in academic legal research. As parental rights is a field especially prone to discrimination and subconscious stereotyping, there is a clear need to assess the role of the ECtHR in successfully or less successfully addressing stereotypes in its jurisprudence. The juxtaposition of case law on women from different minority backgrounds aims to look at compounded stereotypes related to different grounds of discrimination such as "religion", "national or social origin" or "other status" in combination with "sex", from an intersectional perspective. This allows to see the "real individual", namely the real affected mothers behind the stereotypes: mothers such as two female Jehovah witnesses in *Hoffman v Austria* (1993) and *Palau-Martinez v France* (2003), a disabled mother in *AK and L v Croatia* (2013), a low-income Muslim mother in *Soares de Melo v Portugal* (2016), a trans mother in *AM and Others v Russia* (2021), a Muslim mother with refugee status in *Abdi Ibrahim v Norway* (2021) or a lesbian mother in *X v Poland* (2022). The paper

builds on previous research on stereotyping in ECHR discrimination law, but goes beyond mere Article 14 ECHR analysis, recognising the need to clarify and theorise the approach to "stereotypes" in human rights law regarding specific human rights claims beyond discrimination clauses. It identified an overview of core cases of compounded stereotyping in this regard and assesses the particularity of compounded stereotpyes of different groups, analysing the prevalence of anti-stereotyping reasoning over the years and possible areas of improvement.

- **Amanda Potts** (University of Cardiff) – *'Woman' vs. 'womb': The construction of pregnant people in 50 years of amicus briefs from landmark abortion cases*
  This talk presents an interdisciplinary legal-linguistic study of the amicus briefs that were filed in the milestone U.S. Supreme Court abortion cases of Roe, Doe, Casey, and Dobbs. Amicus briefs are intriguing discursive artefacts that in which various constituencies construct abortion, women, fetuses, physicians, rights, and harms (Collins et al 2015). The resulting corpus comprises 1.1 million words of briefs spanning approximately 50 years. Applying corpus-based critical discourse analysis (Partington et al 2013), we systematically compare the rhetorical strategies across categories of amici (e.g., religious groups versus medical groups), analyze diachronic shifts in nomination strategies, and contrast argumentation in briefs seeking to restrict versus expand abortion access.
  In this presentation, we will focus on ways that women have been represented over time in landmark abortion cases, and contrast the ways in which authors advocating to either restrict or expand abortion describe women. Through collocation analysis of adjectival attributes, we reveal how briefs arguing to expand abortion access were dedicated to intersectional narratives of harm and undue burdens that would be suffered by marginalized groups of women—even though these issues were not before the Court. By contrast, in nomination analysis, we show how authors wishing to restrict abortion depicted pregnant people as atomistic body parts (i.e. womb and cervix), or pregnant mothers. This represents the reproductive organs are the entirety of the pregnant person, eviscerates the relationship of the woman's work and labor in pregnancy, and assigns the presumptive identity of mother regardless of pregnancy outcome. Intriguingly, the pregnant person is passive across all briefs and over time, indicating that the main party is being omitted from the discourse.

This study offers historical perspectives into evolving rhetorical strategies in abortion litigation, contemporaneous insights into the state of abortion politics, and future implications to amici activity and abortion advocacy. It charts a course forward for more effective engagement with the Court through (re-)incorporation of holistic nomination strategies, individual narratives, and agentive roles.

References:

Paul M. Collins Jr. et al., The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content, 49 Law & Soc'y Rev. 917 (2015)

Alan Partington, et. al., Patterns and Meanings in Discourse Theory and Practice in Corpus-Assisted Discourse Studies (CADS) 11 (2013).

Third Session – Stereotyping as Ex/inclusionary Approach

- **Raquel Regueiro Dubra** (Complutense University of Madrid) – *Female Offenders and International Criminal Law: From Plavšić to Lvova-Belova*

  The under-representation of women in international courts, especially in the judiciary, leads to a crisis of legitimacy for these courts, as they do not adequately represent the interests of those they are supposed to protect. The gender approach enshrined in the Rome Statute provides for equal representation among the judges of the International Criminal Court. This has made it possible to continue and improve the judicial work of the criminal tribunals for the former Yugoslavia and Rwanda with regard to the definition of grave crimes against women as elements of the three international crimes of genocide, crimes against humanity and war crimes. However, international criminal tribunals are more willing to consider women as victims and have been and are generally reluctant to prosecute women for the commission of international crimes unless they are in a clear position of leadership. Thus, women are divided into *ordinary* women who became criminals because they fulfilled the social role expected of them, and *violent* women who become criminals because of an anomaly, thus denying their status as real women, as their very existence challenges the common association between women and femininity.

  According to Gentry/SJOBERG's approach, violent criminal women are characterized as *mothers*, *prostitutes* or *monsters*, depending on whether the (supposed) underlying motivation is the role of wife or mother, erotomania or simply the expression of an ultimate evil due to a mental anomaly. Womanhood is repeatedly used by the defense as well as the prosecution and the media to paint a picture of the criminal that suits the interests of each party.

The experiences of the four women indicted by the International Criminal Courts confirm this conclusion. Plavšić, Nyiramasuhuko and Gbagbo are considered iron women who simultaneously acted as mothers of an entire nation. Lvova-Belova immortalizes the image of a biological mother, but also the metaphorically adoptive mother of all abandoned children in Russia and Ukraine. Plavšić's personal relationships with the warlords were emphasized, Gbagbo was the wife who supported her husband, and Nyiramasuhuko's dysfunctional relationship with her son, whom she instructed to commit acts of sexual violence against women, furthers the vision of the *erotomaniac* woman. The limited view of the violent criminal woman as *mother*, *prostitute* or *monster* prevents a discussion of the true motivations for committing international crimes and artificially perpetuates an idealized image of femininity that denies women the capacity to be autonomous agents. Despite the progress made, the legacy of *ad hoc* international criminal tribunals is the perpetuation of stereotypes. The legacy of the International Criminal Court has yet to be written, and it is hoped that when confronted with this issue, the Court will be able to recognize the role of women in the commission of international crimes, that the violent criminal woman did not deviate from her nature as a woman when she instigated, aided, participated in or committed international crimes. She did not become a *mother*, a *prostitute* or a *monster*, but acted as what she is, a criminal.

- **Maria Carmen Pérez González** (Carlos III University of Madrid) – *Gender Stereotyping and Sport: The Rights of Trans and Intersex Athletes at the ECtHR*
  La sentencia del TEDH adoptada el 11 de julio de 2023 en el asunto Semenya c. Suiza proporciona una oportunidad para reflexionar sobre la cuestión de la discriminación de las deportistas trans e intersexuales en el ámbito deportivo. El asunto trae causa de la adopción por parte de la IAAF (hoy World Athletics) del Reglamento de elegibilidad para participar en determinadas categorías femeninas, aplicable únicamente a las mujeres con determinadas variaciones particulares de sus características sexuales. El Reglamento, de 2018, establecía criterios de elegibilidad que obligaban a estas atletas a reducir su nivel de testosterona en sangre a un nivel específico, a fin de seguir siendo elegibles para competir en determinadas pruebas de la categoría femenina. Establecía, en definitiva, quién es una mujer y quién no a los efectos de la participación en estas competiciones. El recurso interpuesto por la atleta y la Federación Sudafricana de Atletismo ante el Tribunal Arbitral del Deporte (CAS, por sus siglas en inglés)

fue resuelto el 1 de mayo de 2019 a favor de la federación internacional. El CAS consideró que la limitación de los derechos de la atleta estaba justificada por la necesidad de proteger tanto la integridad de la competición, como los derechos del resto de las participantes. El laudo fue recurrido ante el Tribunal Federal Suizo, que inadmitió el recurso mediante decisión de 8 de septiembre de 2020, dejando expedita la vía ante el TEDH. Se trata por lo demás de un caso que ha llamado la atención del Consejo de Derechos Humanos de Naciones Unidas (NNUU), que, el 29 de marzo de 2019, adoptó una Resolución en la que exhortaba a los Estados a que velasen porque las asociaciones y los órganos deportivos apliquen políticas y prácticas que resulten efectivamente compatibles con las normas y los principios internacionales de derechos humanos. En un sentido semejante se pronunciaron también, conjuntamente, los Relatores Especiales del Consejo de Derechos Humanos sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental y sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Grupo de Trabajo sobre la cuestión de la discriminación contra la mujer en la legislación y en la práctica. Aunque la sentencia del TEDH en el asunto Semenya no es definitiva por haber sido referida a la Gran Sala, sí nos brinda la ocasión de afrontar algunos debates: ¿Resultan aplicables en el ámbito deportivo los estándares internacionales de derechos humanos que prohíben la discriminación por razón de género? ¿O, por el contrario, justifica la buena gobernanza del deporte y de sus competiciones determinadas excepciones o limitaciones en el disfrute de ciertos derechos? ¿Cuál es el papel de los órganos de protección internacional de derechos humanos en este ámbito? Este trabajo tratará de dar respuesta a estos interrogantes.

- **Shima Esmailian** (Geneva Academy of International Humanitarian Law and Human Rights) – Prostitution or Sex Work: the UN Human Rights Mechanisms and the Power of Discourse

  The term "prostitution" has long been used by various UN Human Rights Mechanisms, including Treaty Bodies, the Universal Periodic Review, and Special Rapporteurs. Despite advocacy from civil society organizations to adopt the term "sex work" and some shifts within certain UN bodies, other mechanisms—such as the Special Rapporteur on Violence Against Women—continue to favor "prostitution" over "sex work." While sex work remains a contested human rights issue—whether it should be legalized or prohibited—there is no clear consensus or consistency among UN Human Rights Mechanisms nor within the action plans

of various agencies. This paper specifically explores the connotations associated with the terms "prostitution" and "sex work." Through a discourse analysis of reports, concluding observations, and jurisprudence from human rights mechanisms, the paper examines the implications of these differing terminologies. Drawing on feminist theories, civil society reports that address this issue, and interviews with activists, this paper analyzes the discourse produced by UN Human Rights Mechanisms. It concludes that the choice of terminology significantly shapes how the issue is framed. The term "prostitution" often portrays women as subjects of exploitation in need of protection or rescue, whereas "sex work" emphasizes women's agency over their sexuality and addresses their specific needs as they define them. This shift in discourse is particularly evident in recent changes within some mechanisms, such as the Committee on the Elimination of Discrimination Against Women.

- **Belén Mattos-Castañeda** (University of Durham) – *The Influence of Gender Stereotypes on Criminal Justice Responses to Women Prosecuted for Involuntary Pregnancy Losses and Perinatal Accidents in Argentina*
  In February 2018, Milagros, who was 16 years old at the time, gave birth alone in the latrine located inside her precarious home, and the baby died. Milagros went to the local hospital, accompanied by her father, where healthcare professionals informed the police. She was taken into custody shortly after and eventually convicted of murder aggravated due to the relationship under extraordinary mitigating circumstances. Similarly, in December 2018, Rocío went into labour and delivered a baby in the toilet of her workplace. She asked for help and her employer called an ambulance. At the hospital, medical staff, upon noticing that the placenta corresponded to a full-time pregnancy, informed the police. Rocío was arrested as soon as she was discharged from the hospital and was convicted of murder aggravated due to the relationship under extraordinary mitigating circumstances. As these stories illustrate, in Argentina —as in other parts of the world— involuntary negative pregnancy outcomes, such as miscarriages, stillbirths, or accidents at the time of birth, continue to result in the criminalisation of women from low socio-economic backgrounds. The spontaneous demise of a foetus or child around the time of birth or perinatal period can trigger criminal investigations and prosecutions for serious criminal offences, typically *homicide aggravated due to the relationship*, and sometimes *person abandonment*. Women in these cases are perceived as inherently guilty and blameworthy by judges and

prosecutors because they are seen as having breached gender mandates by failing to meet societal expectations of maternal care. This perception starkly contrasts with Argentina's gender-protective legislation and the guidelines provided by the Inter-American Court of Human Rights in *Manuela v El Salvador* [2021]. In this landmark decision, the IACtHR determined that the wrongful conviction of a woman for aggravated murder, after she suffered a miscarriage, violated a series of human rights. It is thus clear that gender biases in the criminal justice system have detrimental consequences for women's right to a fair trial under conditions of equality and non-discrimination. Although the cases studied in this paper involve spontaneous obstetric incidents rather than intentional criminal offences, looking at social norms and perceptions regarding 'good' motherhood is helpful to understand how these beliefs influence the criminalisation process. This work argues that the alleged criminal intention of the defendants in these cases is construed using gender stereotypes and that this is evident when examining the discourses of judicial operators. By applying feminist critical discourse analysis, this paper assesses the influence of gender biases in the construction of involuntary negative pregnancy outcomes as criminal offences. Through an examination of two court decisions from different provinces in Argentina, this paper reveals the underlying gender stereotypes that guide the criminalisation of women from disadvantaged socio-economic backgrounds for unintentional incidents connected with pregnancy and childbirth.