



Judges' Experiences with Foreign Jurisprudence in Human Rights Adjudication

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ABSTRACT

Comparative law scholarship has documented the circulation of foreign jurisprudence across legal systems, especially in human rights adjudication, focusing on doctrinal influence and judicial dialogue. However, limited attention has been given to how judges personally engage with foreign legal sources in concrete decision-making contexts. This study uses an interpretative phenomenological approach to explore how judges interpret and negotiate the use of foreign jurisprudence in landmark human rights cases. Data from in-depth interviews with judges experienced in human rights adjudication were analyzed through Interpretative Phenomenological Analysis. The analysis identified key themes, showing that judges encounter legal uncertainty, negotiate legitimacy, and manage institutional and personal responsibilities when engaging with foreign jurisprudence. These findings suggest that comparative jurisprudence is not merely a technical tool, but a reflective practice shaped by contextual judgment. This study highlights the importance of phenomenological approaches in understanding judicial reasoning in transnational legal contexts.



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INTRODUCTION

In an increasingly interconnected legal world, national legal systems are no longer insulated from external influences (Hasan, 2021). Courts across jurisdictions are progressively exposed to foreign jurisprudence, transnational legal norms, and comparative constitutional reasoning, particularly in cases involving fundamental rights. Within the field of comparative law and legal systems, this development reflects a broader transformation in how law is understood not merely as a closed, domestic system, but as part of a global legal conversation shaped by cross-border judicial dialogue and normative exchange. As a result, judicial decision-making has become situated at the intersection of national legal traditions and transnational legal ideas.

This phenomenon is especially salient in the adjudication of human rights cases, where courts frequently encounter principles and precedents originating from foreign or international jurisdictions. Comparative jurisprudence is often invoked to enrich legal reasoning, strengthen normative legitimacy, or respond to complex rights-based claims that transcend national boundaries. Existing scholarship has documented the growing visibility of foreign law in constitutional and human rights adjudication, emphasizing its doctrinal significance and institutional implications (Capus & Brodersen, 2022). However, these discussions have largely focused on legal texts, judicial outputs, or systemic patterns, offering limited insight into how such comparative engagement is experienced by judges themselves.

Beyond its doctrinal relevance, the use of foreign jurisprudence carries a deeply human and experiential dimension. Judges are not passive transmitters of legal norms; they are interpretive actors who navigate uncertainty, responsibility, and institutional expectations in the course of their decision-making (Abramova & Marcheva, 2024). Engaging with foreign legal sources may evoke reflections on professional identity, constitutional loyalty, and the moral weight of judicial authority. These experiences are shaped by broader social, cultural, and political contexts in which courts operate,

including public expectations, legal traditions, and debates over sovereignty and legitimacy. Understanding this phenomenon therefore requires attention not only to legal reasoning as an abstract process, but also to the lived experiences through which judicial meaning is constructed.

Despite the growing prominence of comparative jurisprudence, there remains a need for deeper exploration of how this practice is subjectively experienced and interpreted by judges. A phenomenological perspective offers a valuable lens for addressing this gap, as it foregrounds meaning, perception, and lived experience as central sources of knowledge (Helberger, 2025). By focusing on how judges encounter, interpret, and make sense of foreign jurisprudence in concrete adjudicative contexts, phenomenology enables a more nuanced understanding of comparative law as a lived practice rather than solely a doctrinal exercise. Such an approach responds to the need for scholarship that captures the experiential foundations of judicial decision-making within an increasingly transnational legal landscape.

Within the broader field of comparative law, scholarly attention has increasingly turned toward the experiences of legal actors as a meaningful site of inquiry (Tailakova et al., 2025). In particular, the subjective experiences of judges have been recognized as central to understanding how comparative jurisprudence operates in practice, especially in constitutional and human rights adjudication. Rather than viewing comparative law solely as a method of comparing legal systems or doctrines, recent studies have suggested that it also functions as an experiential process through which judges engage with unfamiliar legal ideas, negotiate interpretive boundaries, and reflect on their professional roles (Tailakova et al., 2025). This shift has positioned judicial experience as an important, though still underexplored, sub-area within comparative legal scholarship.

Despite this growing recognition, investigating the lived experiences of judges presents significant methodological challenges (Taufiqurrohmah et al., 2024). Much of the existing literature relies on doctrinal analysis, comparative case studies, or institutional-level examinations, approaches that are effective for mapping legal structures but limited in their capacity to capture meaning as it is experienced by judicial actors (Harahap, 2024). Quantitative and text-centered methods, in particular, tend to abstract judicial reasoning from the personal, emotional, and contextual dimensions in which it unfolds (Gyöngyi, 2024). As a result, aspects such as uncertainty, internal deliberation, and perceived legitimacy remain largely invisible within prevailing research designs.

These methodological constraints have led to a fragmented understanding of comparative jurisprudence as a lived phenomenon. While prior studies have illuminated patterns of judicial borrowing and transnational dialogue, they offer limited insight into how judges themselves interpret, internalize, and give meaning to foreign legal sources in concrete decision-making contexts (Arifardhani et al., 2025). The dominance of non-experiential approaches has therefore constrained the ability of existing research to grasp the essence of this phenomenon in a holistic manner. Addressing these limitations requires an approach capable of foregrounding meaning, context, and subjectivity elements that are essential for understanding comparative law as it is lived and practiced by judges.

Current efforts to understand the use of foreign jurisprudence in human rights adjudication have predominantly relied on established practical and analytical approaches within comparative law (Irham et al., 2021). These approaches typically emphasize doctrinal comparison, analysis of judicial outcomes, or institutional mapping of transnational legal influence. Such strategies have been valuable in explaining how foreign legal sources circulate across jurisdictions and how they are formally incorporated into judicial reasoning (Žofčinová & Melegová, 2025). In this context, the prevailing solution has been to refine existing comparative frameworks in order to better systematize legal borrowing and judicial dialogue.

However, these approaches remain limited in their ability to capture the experiential and meaning-oriented dimensions of judicial engagement with foreign jurisprudence (Muntaqo et al., 2025). By focusing primarily on legal texts and observable outcomes, existing methods tend to overlook how judges subjectively experience uncertainty, responsibility, and legitimacy when navigating between domestic constitutional commitments and transnational legal norms (Masyhuri et al., 2023). As a result, current understandings offer a structurally informed yet experientially thin account of comparative

jurisprudence, leaving unanswered questions about how judicial actors themselves make sense of this practice in their everyday professional lives.

These limitations point to the need for an alternative research strategy capable of illuminating the essence of this phenomenon as it is lived and interpreted by judges (Skoromnyi, 2022). A phenomenological approach provides such a pathway by foregrounding experience, perception, and meaning as central analytical concerns (Shebaita, 2025). Through phenomenology, it becomes possible to move beyond surface-level explanations and explore how judges encounter, interpret, and negotiate foreign jurisprudence within specific institutional and cultural contexts. Addressing this gap is essential for developing a more holistic and human-centered understanding of comparative law, particularly in the adjudication of human rights cases.

Existing literature on comparative law and human rights adjudication has examined how foreign jurisprudence circulates across legal systems and influences judicial outcomes (Spry, 2025; “Transition of Marriage from Sacrament to Contract: Comparative and Critical Reflections on Women’s Rights in Hindu and Muslim Laws,” 2021). Prior studies have focused on doctrinal comparison, transnational judicial dialogue, and institutional patterns of legal borrowing. Some scholars have acknowledged the role of judges as interpretive actors, yet their analyses remain largely text-centered and outcome-oriented. Research on judicial experience has emerged in adjacent fields, but it has rarely been integrated systematically into comparative constitutional scholarship (Ali & Mulyono, 2023). As a result, the experiential dimension of engaging with foreign jurisprudence remains insufficiently articulated.

This study addresses this limitation by adopting an interpretative phenomenological approach to explore judges’ lived experiences (Ziemann, 2025). Phenomenology is used to capture how judges experience uncertainty, legitimacy, and responsibility when engaging with foreign jurisprudence in human rights cases. This approach allows attention to meaning as it emerges through reflection, context, and professional practice (Akhmad et al., 2023). By focusing on lived experience, the study responds directly to the knowledge gap identified in previous research. It offers an experiential account that complements and extends existing comparative legal analyses.

The article is structured to guide the reader through this phenomenological inquiry in a clear and coherent manner. It begins with an introduction that outlines the general and specific background of the phenomenon and identifies the knowledge gap (Oderiy et al., 2024). The methodological section explains the phenomenological design, participant selection, data collection, and analytic process. The results section presents thematically organized findings grounded in participants’ narratives (“Approaches of the Religious Court Judges in Indonesia to Settle Joint Marital Property Disputes,” 2023). The discussion then situates these findings within existing scholarship and highlights their theoretical and practical implications, followed by a concluding section that summarizes key insights.

RESEARCH METHODS

Study Design

This study employed a phenomenological research design to explore judges’ lived experiences in engaging with foreign jurisprudence when deciding landmark human rights cases. Phenomenology was selected because it is particularly suited to examining how individuals experience, interpret, and assign meaning to complex professional practices (Lutz & Knox, 2014; McNabb, 2015). Within the context of comparative law, this approach enables an in-depth exploration of judicial reasoning as it is lived and reflected upon, rather than as it is formally articulated in legal texts.

An interpretative (hermeneutic) phenomenological orientation informed the design of the study. This approach, grounded in Heideggerian philosophy, emphasizes the interpretive nature of human experience and recognizes that meaning emerges through the interaction between participants’ accounts and contextual understanding. Applied to this study, interpretative phenomenology allowed for the examination of how judges make sense of foreign legal sources within their institutional, constitutional,

and cultural contexts, thereby aligning closely with the research question focused on subjective judicial experience.

Participants

Participants consisted of judges with professional experience in adjudicating human rights cases within domestic courts where references to foreign or comparative jurisprudence were relevant. A purposive sampling strategy was employed to ensure that participants possessed direct and substantial experience with the phenomenon under investigation.

Inclusion criteria required participants to (1) hold a judicial position at the constitutional, supreme, or appellate court level, (2) have experience in adjudicating cases involving fundamental rights, and (3) have encountered or considered foreign jurisprudence in judicial reasoning. Judges without experience in human rights adjudication or without exposure to comparative legal reasoning were excluded.

The final sample comprised a small, information-rich group of judges, consistent with the idiographic focus of phenomenological research (Hillman & Radel, 2018; Migdal, 2018). Demographic characteristics such as professional role, length of judicial experience, and area of specialization were documented to provide contextual grounding for the findings while preserving participant anonymity.

Data Collection

Data were collected through in-depth, semi-structured interviews designed to elicit rich and reflective accounts of participants' experiences. An interview guide was developed to explore key areas related to the use of foreign jurisprudence, including perceptions of legal uncertainty, considerations of legitimacy, institutional constraints, and personal reflections on judicial reasoning.

Interviews were conducted in a setting chosen to ensure participant comfort and confidentiality, either in private offices or secure virtual environments. Each interview lasted approximately 60–90 minutes, allowing sufficient time for participants to elaborate on their experiences (Carreiras & Castro, 2012; Iosifides, 2016). All interviews were audio-recorded with participants' consent and subsequently transcribed verbatim to ensure accuracy. Field notes were maintained to capture contextual observations and preliminary reflections that supported analytical sensitivity.

Data Analysis

Data analysis followed the principles of Interpretative Phenomenological Analysis (IPA), emphasizing a detailed and systematic engagement with each participant's account (Daly, 2007; Longhofer et al., 2012). The analytical process began with repeated readings of the transcripts to achieve immersion in the data. Meaning units were then identified and coded to capture significant statements related to participants' experiences.

Emergent themes were developed through an iterative process of comparison and reflection, moving from idiographic analysis of individual cases to the identification of shared patterns across participants. These themes were further refined to articulate the essential structures of the phenomenon. Throughout the analysis, attention was given to the double hermeneutic process, in which participants' interpretations of their experiences were examined alongside contextual and conceptual considerations within comparative law (Fife, 2020; Kawamura, 2020). Qualitative data analysis software (NVivo) was used to support data organization and retrieval, without substituting for interpretative judgment.

RESULTS

Experiencing Legal Uncertainty in the Encounter with Foreign Jurisprudence

A dominant theme in the participants' accounts was the experience of legal uncertainty when encountering foreign constitutional principles. Judges did not view this uncertainty merely as a technical challenge but as an emotional and cognitive condition that influenced their judicial reasoning. The introduction of foreign case law often disrupted the perceived stability of domestic legal interpretation,

leading judges to question their authority and the coherence of their legal reasoning. This theme directly ties to the study's core research question: how judges navigate the challenges of incorporating foreign jurisprudence in human rights cases. One participant reflected:

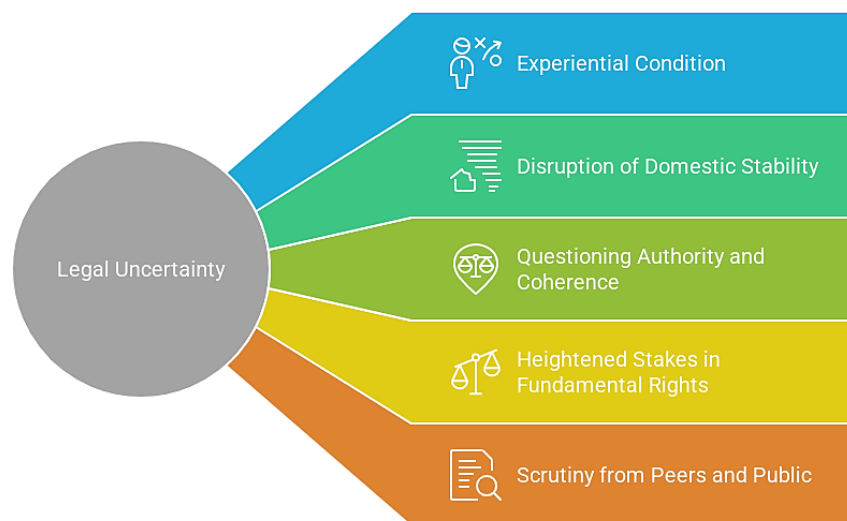
“When I read foreign judgments, especially from constitutional courts abroad, I feel a tension—almost a hesitation. I ask myself whether I am still firmly standing on domestic law or already stepping beyond it.” (Judge 3)

This uncertainty was particularly pronounced in fundamental rights cases, where the stakes were high. Judges recognized that the use of foreign jurisprudence could expose them to scrutiny from both the legal community and the public. As one participant noted:

“Human rights cases are sensitive. Introducing foreign reasoning can strengthen an argument, but it can also raise doubts about loyalty to our own constitutional framework.” (Judge 1)

Thus, legal uncertainty emerged as a significant factor in how judges approached foreign legal sources, directly affecting their decision-making in human rights cases.

Dimensions of Legal Uncertainty



Negotiating Legitimacy between National Sovereignty and Transnational Legal Norms

Judges consistently described their engagement with foreign jurisprudence as a process of negotiating legitimacy. This negotiation was central to the research question of how judges justify their use of foreign legal sources in the context of national sovereignty and transnational human rights norms. Judges balanced respect for national sovereignty with the perceived moral and legal authority of transnational norms, often applying foreign judgments selectively and critically. One judge explained:

“Foreign law is never applied as it is. I constantly ask whether it fits our constitutional values and whether it can be justified before the public and the legal community.” (Judge 5)

For many, legitimacy was determined not just by doctrinal compatibility but also by contextual resonance, as they evaluated whether the conditions underlying foreign judgments were similar to those in their domestic context. One participant said:

“A decision from another country may be persuasive, but if the social conditions are too different, its legitimacy here becomes questionable.” (Judge 2)

This theme directly highlights the value-laden nature of comparative jurisprudence, showing that it is not a neutral exercise but one that requires ongoing justification, addressing both the study's aims and the participants' experiences.

Institutional and Personal Pressures in Comparative Judicial Reasoning

Participants noted the institutional and personal pressures they faced when referencing foreign jurisprudence. These pressures were integral to understanding how judges make decisions in the context

of foreign legal influences. Judges described the tension between institutional norms and the potential for criticism from colleagues, particularly in human rights cases. One participant stated:

“There is always the fear that colleagues will see the use of foreign cases as unnecessary or even inappropriate. That awareness influences how carefully I frame my reasoning.” (Judge 4)

Additionally, personal moral pressure was significant, especially when judges felt compelled to use foreign jurisprudence to reach what they believed was a just outcome, despite potential professional risk. Another judge expressed:

“Sometimes, foreign jurisprudence helps articulate what justice demands, but using it requires courage.” (Judge 6)

These pressures illustrated the complexity of judicial decision-making, where external and internal factors influenced how foreign jurisprudence was incorporated into reasoning.

Transformative Impact of Comparative Engagement on Judicial Self-Understanding

Finally, judges described how their engagement with foreign jurisprudence led to a transformative shift in their professional self-understanding. This theme ties directly to the study's focus on how judges experience and interpret foreign legal sources in their decision-making. Exposure to comparative reasoning altered how judges viewed their roles within the legal system, with some feeling that they were part of a broader international judicial conversation. One judge reflected:

“Over time, engaging with foreign judgments has changed how I see my role. I no longer view myself as confined to national borders, but as part of a broader judicial conversation.” (Judge 1)

This transformation did not diminish their commitment to domestic law but deepened their reflective awareness of law as a dynamic, evolving practice. Participants emphasized that comparative engagement fostered greater caution and transparency in their reasoning.

These findings underscore that judges' engagement with foreign jurisprudence is a complex, reflective process, deeply embedded in legal uncertainty, legitimacy concerns, institutional pressures, and professional transformation. By grounding these experiences in the participants' accounts, this study links each theme to the broader research question of how judges navigate foreign jurisprudence in human rights adjudication.

DISCUSSION

Summary of the Main Findings

This study reveals that judges experience the use of foreign jurisprudence in human rights adjudication as a complex and reflective process shaped by legal uncertainty, legitimacy negotiation, institutional pressure, and professional transformation (Atiles & Rojas-Páez, 2022). These findings respond directly to the central question of how judges experience and interpret foreign jurisprudence within domestic legal systems, highlighting comparative law as a lived and meaning-laden practice rather than a purely doctrinal exercise.

Contribution of the Findings to the Research Question

The findings provide a substantive answer to the research question by demonstrating that judges' engagement with foreign jurisprudence is grounded in subjective experience and interpretive judgment (Caruso, 2025). Rather than treating foreign legal sources as neutral or technical references, judges experience them as catalysts for reflection on constitutional identity, professional responsibility, and judicial authority. Legal uncertainty emerged as an essential experiential condition, shaping how judges assess the appropriateness and limits of comparative reasoning (Amazige, 2025). The negotiation of legitimacy further illustrates that comparative jurisprudence is interpreted through contextual and normative considerations, not merely through formal compatibility with domestic law.

In addition, the findings show that institutional and personal pressures significantly influence how judges engage with foreign jurisprudence, affecting both the visibility and framing of comparative reasoning in judicial decisions. The transformative impact identified in participants' narratives indicates

that sustained engagement with foreign jurisprudence reshapes judges' self-understanding and interpretive horizons over time. Together, these insights advance understanding of comparative law by foregrounding the experiential dimensions through which judicial meaning is constructed, thereby addressing a gap left by text-centered and outcome-focused approaches.

Relationship with Prior Literature and Theory

The findings align with existing scholarship that recognizes the growing role of transnational judicial dialogue and foreign jurisprudence in constitutional and human rights adjudication. Prior studies have documented patterns of legal borrowing and cross-border influence, emphasizing doctrinal development and institutional dynamics (Rohman et al., 2024). This study complements that body of work by demonstrating how such patterns are lived and interpreted by judges in practice. In doing so, it extends Bobek's (2021) observation that foreign law functions as a persuasive rather than binding authority by revealing the experiential reasoning through which persuasion is assessed and internalized.

At the same time, the findings deepen existing theoretical discussions on judicial reasoning by highlighting dimensions that remain underexplored in comparative law literature. While Kelemen (2023) emphasizes institutional incentives and constraints shaping judicial behavior, this study shows how such constraints are experienced subjectively as pressure, caution, and moral responsibility. The interpretative phenomenological perspective also resonates with broader hermeneutic theories of law, which view legal interpretation as a situated and meaning-making activity rather than a mechanical application of rules (Smart & Wood, 2025). By centering judicial experience, this study contributes to a more holistic understanding of comparative jurisprudence, situating legal reasoning within the lived realities of those who practice it.

Implications of the Findings

The findings of this study carry important theoretical and practical implications for the field of comparative law and human rights adjudication. At a theoretical level, the study reinforces the view that comparative jurisprudence cannot be fully understood through doctrinal analysis alone, as it is deeply shaped by judges' lived experiences, interpretive reflections, and professional identities. By revealing how legal uncertainty, legitimacy negotiation, and institutional pressure are experienced subjectively, the findings contribute to a more human-centered understanding of judicial reasoning. Practically, these insights are relevant for judicial education and professional development, suggesting that training programs may benefit from addressing not only comparative legal knowledge but also the experiential and ethical dimensions of engaging with foreign jurisprudence (Caruso, 2025). More broadly, the findings are applicable to legal systems facing increasing transnational influence, as they highlight the importance of contextual sensitivity and reflective judgment in maintaining public trust and constitutional coherence.

Limitations of the Study

Several limitations should be acknowledged when interpreting the findings of this study. First, the phenomenological design prioritizes depth of understanding over breadth, which limits the generalizability of the findings across all judicial contexts (Apriantoro, 2024). The sample was intentionally small and context-specific, focusing on judges with experience in human rights adjudication, and therefore may not capture experiences from other judicial levels or legal domains (Rohman et al., 2024). Second, the findings are based on self-reported narratives, which may be influenced by retrospective reflection or professional self-presentation. While strategies such as reflexive journaling and careful thematic analysis were used to enhance credibility, these limitations should be considered when applying the insights to broader comparative contexts.

Prospective Directions for Future Research

Future research may build on the findings of this study by extending phenomenological inquiry to other legal actors, such as prosecutors, legal clerks, or constitutional advisors, to explore how comparative jurisprudence is experienced across different professional roles (Siroj & Marzuki, 2023). Comparative studies across jurisdictions could further illuminate how cultural, institutional, and political contexts shape judicial experience in distinct ways (Khalid & Ramadani, 2023). In addition,

integrating phenomenological insights with complementary qualitative approaches may deepen understanding of how experiential meaning interacts with institutional structures. Such research has the potential to advance comparative law by fostering a more nuanced and holistic account of legal reasoning in an increasingly interconnected legal landscape.

CONCLUSION

This study examined judges' lived experiences in engaging with foreign jurisprudence when deciding landmark human rights cases within domestic legal systems. The findings demonstrate that comparative jurisprudence is experienced as a reflective and meaning-laden practice shaped by legal uncertainty, legitimacy negotiation, institutional pressure, and professional transformation. These insights have practical implications for improving how judges engage with foreign legal sources. Specifically, legal practitioners and policymakers should consider providing targeted training programs for judges that focus on navigating legal uncertainty and enhancing their understanding of the legitimacy of foreign jurisprudence in domestic contexts. Furthermore, creating peer support networks within the judiciary could help mitigate institutional pressures, allowing judges to share experiences and strategies for incorporating foreign legal reasoning into their decisions.

By foregrounding judicial experience, this study addresses a critical gap in comparative law research that has traditionally prioritized doctrinal outcomes over subjective meaning. The results contribute to a deeper understanding of how judges interpret and internalize foreign legal sources while remaining grounded in national constitutional contexts. These insights extend existing scholarship by integrating phenomenological perspectives into the study of comparative jurisprudence and human rights adjudication. Future research could build on this approach by exploring judicial experience across different legal systems or combining phenomenological inquiry with complementary qualitative methods, such as focus groups or longitudinal studies, to further enrich the understanding of how judges navigate comparative legal practice.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest regarding the publication of this article.

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