QUESTIONNAIRE 2019 OF THE 1ST STUDY COMMISSION

Astana, Kazakhstan

It was decided by the First Study Commission of the IAJ held in Marrakech Morocco that the following topic will be discussed in the 2019 conference:

“Social media and the judiciary, notably:
1. How best to respond to unfair comments about judges made on social media;
2. Use of social media by judges and courts: opportunity or danger?”

The use of social media is widespread in society today. Although there is a general perception that they are more frequently used by the younger generations, that is to say, by the so-called “digital natives”, their users include older people, corporations, politicians and public agencies as well.

Social media can be a practical, fast and inexpensive tool for making contact to other people and for exchanging information, but it can also be a means of disseminating inappropriate and offensive ideas and behaviors.

In order to understand to what extent this scenario may affect the activity of judges and courts, we present the following questions:

1. What is the best way to respond to unfair comments about judges made on social media? Should the response be given through social media itself or should it be given by other means? Who should be responsible for this response, the judges themselves or someone on their behalf? If possible, kindly provide examples of cases in which said responses were given and what were the results and outcome (good or bad) of said responses accordingly.

This is a matter of principle but, in general terms, individual judges should not respond individually. Whether there should be a response from the Judicial Office is a different matter but it is not usual for there to be such a response. What is done sometimes is that the particular ruling
which is criticised is made available on the internet so that people can see what was actually stated and so any misreporting can be seen to be wrong.

Otherwise, obviously the Article 50/Brexit case which went to the Supreme Court is a prominent example of judges (including the then-Lord Chief Justice) being very badly criticised – described as ‘enemies of the people’. No official response was made although retired judges did give interviews explaining about the independence of the judiciary. Once the furore had died down and in the months leading up to his retirement, the then-Lord Chief Justice, Lord Thomas, made certain speeches in which he expressed regret at the criticism and similarly explained the importance of judicial independence. Ultimately, it seems that this episode resulted in a greater appreciation of what judges do but it is difficult to be too certain about this.

In addition, the judiciary of England and Wales has an official Twitter feed: @judiciaryUK. The press office uses it to explain the work of judges and to provide links to public judgments. It is not used to reply to unfair comments on social media because people are allowed to criticize judicial decisions. However, if a social media post originated from an inaccurate article on a recognized media website, the judicial press office would request a correction with that media outlet.

2. Are there rules in your country defining how to respond to unfair comments about judges made on social media? If so, are those rules determined by some higher body of the judiciary and are they binding?

No

3. Do the courts of your country use social media as a means of communication? If so, which ones are used (e.g. Facebook, Instagram, Twitter or others)? In general, what type of information is disseminated by the courts through social media? If possible, kindly give examples. Do the courts have any communication assistance for this purpose? Are there rules that establish what contents can be released by the courts through social media? If so, who defines these
rules? Have the courts of your country ever suffered criticism for any content published on social media? If so, kindly give examples.

*The Twitter feed is the only social media used by the judiciary, the details of which are in answer to question one. The press office will not reply to tweets unless in very limited cases (for example if a link does not work or a correction to a document).*

4. Are judges in your country allowed to use social media in their private lives? If not, where is this prohibition stated and determined? If so, are there any rules setting limits for the expression of judges on social media and accordingly what are these limits?

Yes. *There is a judicial conduct guide, which is public, and this includes social media advice on page 20:*

https://www.judiciary.uk/publications/guide-to-judicial-conduct/

5. Have there ever been cases in your country where judges were criticized by the press or had disciplinary problems because of the content of their posts on social media? If so, kindly give examples. Have there ever been cases of judges who have been disciplined because of those posts? Is there a disciplinary body in charge of imposing sanctions on judges in such cases?

*There have been a small number of judicial disciplinary cases in recent years which have resulted in judicial office holders receiving a disciplinary sanction for misuse of social media. The Judicial Office do not hold data on the exact number of cases.*

*The JCIO publishes statements about the outcome of disciplinary cases on its website which can be viewed here:*

https://judicialconduct.judiciary.gov.uk/disciplinary-statements/2019/

As disciplinary cases are confidential, individual cases cannot be commented on.