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.
In light of the fact that freedom of expression (Article 21 of the Constitution of Japan) is guaranteed under the Constitution in our country, even if a comment about a judge is made on social media, it is recognized as one that should be, in principle, respected unless it constitutes a criminal act, etc. Therefore, it is considered that one of the best methods of response is to strive to ensure that the citizens accurately understand judges and the judicial system through various efforts, including disclosure of judgments, as well as efforts to ensure that individual judgments are properly and promptly given, so that such unfair comments will not be made. Each judge and court is considered to be responsible for such response. There is no example of such response that can be introduced.

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?

There are no rules in our country defining how to respond to unfair comments about judges made on social media.

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.

Regarding the courts of our country, the Supreme Court now uses Facebook. The Facebook account mainly provides information about recruitment of court officials. There are no rules that establish what contents can be released by the courts through social media, and the courts have not suffered critical coverage, etc. for any content the courts published on social media. However, it is possible to write critical opinions, etc. in the comment column on social media. Generally, if a court official insults or defames a person who visits the court or person related to a case, etc., such act may constitute an act causing a loss of trust prohibited under the National Public Service Act. In addition, if a court official transmits information about his/her workplace or
duty, he/she may conflict with confidentiality under the National Public Service Act depending on the content of the transmitted information.

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?

Judges in Japan are allowed to use social media in their private lives. Regarding the expression of judges on social media, general points to remember, such as prohibition of expressions that breach confidentiality and expressions that insult or defame a person related to a case, are indicated in the same manner as other court officials. The particular expressions that are prohibited are left to the autonomous judgments of judges.

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 has been a case in which a judge of a high court was subjected to a ruling of admonition in a judgment on the status rendered by the Grand Bench of the Supreme Court in October 2018 based on a determination that the judge cited a press report on civil litigation, of which the judge was not in charge, and used expressions that may be taken as making a mockery of the plaintiff in the civil litigation to indicate an evaluation that filing of the litigation was unjust, using the judge’s own Twitter account that was opened under the judge’s own name, and thereby the judge hurt the plaintiff’s feelings.

A disciplinary action against a judge who has committed a violation of service discipline is taken through a judgment on the status under the Judges Status Act.