ANSWERS TO QUESTIONNAIRE OF THE 1ST STUDY COMMISSION 2019/ASTANA FROM THE PORTUGUESE DELEGATION

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.

Due to its nature and to its multiple possible shares, it is not possible to have real control over comments made on social networks on judicial decisions or other actions. A direct answer may not be an adequate solution.

In Portugal, there is no internal regulation of the judiciary on how to react. On cases of greater importance or of misleading information, either the Superior Judicial Council (CSM) or the Judges Association (ASJP) may provide an official and public statement, ex officio or on request of the court or judge concerned.

The answer should not be given by the judge him/herself. The law does not allow judges to comment on public their decisions or decisions of other colleagues, except in very exceptional circumstances and under the CSM authorization or previous knowledge. On the other hand, judges do not like to be personally involved on such actions, as they understand that an answer must be objective and be seen as such.

Recently, on a situation of severe and distorted criticism over judicial decisions concerning domestic violence cases, ASJP issued several statements on TV interviews, newspaper articles and official statements. The experience was not entirely positive. On certain situations, each statement is immediately distorted and leads to more untrue information, causing more damage than good.
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?

According to article 12º of the Statute of Judges, judges may not issue statements or make comments on proceedings, except when authorized by CSM, considering the need to defend their honor or for any other legitimate interest. This rule is mandatory and its breach may give rise to disciplinary responsibility.

Also Principle 7 (Discretion/Reserve) of the Ethical Pledge of the Portuguese Judges states that judges refuse to make statements or comments involving an evaluation assessment on judicial ongoing proceedings as well as on matters that are reasonably expected to be the subject of a proceeding. However, it also admits that, notwithstanding powers conferred by law to presiding judges on matters of communication, judges shall, where they deem it appropriate, assume responsibility for providing clarifications, in oral or written statements. In the development of the same principles, the document also states that both in or outside judicial functions, the judge maintains discretion on any procedures or decisions taken by him/herself, other judges or other judicial or police authorities, abstaining to comment in public and to participate in events where those matters are expected to be discussed or reasonably expected to create interference in the pending case decision process. These rules, while consistent with good practice, are not binding.

CSM has no internal regulation covering its own practice or judges practices.

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.
No. Portuguese courts do not use social networks as a means of communication.

The Courts have no communication assistance for this purpose. Presiding Judges, however, may, at their own initiative or on request of a judge, on cases they deem appropriate, issue statements to the public, but do not use social networks for this purpose.

CSM has professional assistance on communication and uses its website as a means of public communication.

ASJP has also professional assistance on communication. ASJP uses its Facebook and YouTube pages as means of public communication.

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. Judges may use social networks in their private lives, without any restriction other than the above mentioned rules of the Statute concerning the duty of reserve. Likewise, judges are forbidden of exercising public political activity (art. 11 of the Statute), which is applicable on social networks.

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?

Yes, there were recent cases of judges being criticized by mocking comments on a former prime-minister under investigation for corruption. Disciplinary proceedings were also initiated against those judges. According to the press (disciplinary proceedings were secret and no official information was issued) those proceedings were closed by CSM, as it was found no sanction was appropriate.