At the last Conference in Morocco, the First Study Commission of the IAJ decided that in 2019 it will discuss the following topic:

“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 used by the younger generations, that is to say, by the so-called “digital natives”, they also have user among older people, corporations and even public agencies.

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

In order to understand in 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.

The association of judges and not the judges themselves should be responsible to respond to unfair comments about judges made on social media. The response should be given through social media itself and if necessary, also by other means, like interviews on the radio or television.

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, there are no rules in Brazil defining how to respond to unfair comments about judges made on social media. There are only the general rules defining how judges and civil servants of the Judiciary should use social media. Those general rules were determined by the National Council of Justice through Resolution n. 71/2018 and are binding.

Besides that, the Code of Ethics of the Judiciary determines in article 12 that “judges shall behave prudently with regard to social media”. There is also a Manual that the Brazilian Association of Judges (AMB) wrote with recommendations and instructions of how to use social media in a cautious manner.

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.

Brazilian courts use social media like Facebook, Instagram, and Twitter as a means of communication. The Federal Supreme Court (STF) has a Twitter and a YouTube account. The Superior Court of Justice (STJ) has an account on Facebook, Twitter, Instagram, Flickr and YouTube. The National Council of Justice (CNJ) uses itself Twitter, Instagram and Facebook accounts.

In general, Brazilian Courts use social media to disseminate information about their activities, events and rules of functioning. They have communication assistance for this purpose, usually a press office composed by journalists. There are no rules establishing what contents can be released by the courts through social media and until now no court suffered criticism for any content published on social media.

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, Brazilian judges are allowed to use social media in their private lives. However, that use is submitted to some limits. According to article 4 of Resolution 71 of the National Council of Justice, judges must be discreet and cautious by publishing their points of view on social media, in order to avoid the violation of their professional duties and also to avoid the negative exposure of the Judiciary. Article 5 of the same Resolution establishes that judges must avoid statements on social medial about cases they have decided or that they are still working with. And Article 6 of that Resolution establishes that judges must avoid posts on social media that could be interpreted as a discrimination of gender, race, religion and sexual orientation.
Brazilian judges are prohibited to have political activities according to the Constitution and therefore they also can’t publish comments with political content on social media.

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 is a Judge of the Court of Appeals of Rio de Janeiro who posted comments last year about a politician called Marielle Franco, who had been murdered on that same day. She said that Marielle Franco had contacts to drug dealers and the murder had been a kind of “file burning”, reproducing fake news she had received on the internet and that she had not checked before. That post was strongly criticized by the press in the whole country and the National Council of Justice, which is in charge of imposing sanctions on judges in such cases, started a disciplinary procedure against her. That procedure hasn’t come to an end yet.

During last elections for President of Brazil on October 2018, eleven judges were accused of having published comments with political content on social media. The National Council of Justice has examined the issue but decided that those judges hadn’t disrespected the prohibition of having political activity in that case and therefore the Council determined the termination of the procedure.