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.

Since “unfair comments” on social media could be manifold, a general advice cannot be given. In a very general way, judges should use self-restraint in reaction to any sort of utterance on social media.

In Germany, unfair comments about judges made on social media can be prosecuted if they amount to a criminal offence. Under the German Criminal Statute, insult and defamation (sections 185 et seqq.) are criminal offences. Insult can only be prosecuted if the insulted person requests prosecution; if committed against a public official in relation to her or his official duties, insult may also be prosecuted upon request of the superior of the insulted person, which would be her or his court president. Under such a legal framework it seems to be advisable that – rather than responding to unfair comments on social media by commenting on them – such pronouncements that amount to a criminal offence could be followed up by the means of public prosecution. This also seems an appropriate way for the judiciary to “react” to unfair comments on social media, if at all. It must also be noted that “unfair comments” that do not amount to a criminal offence may be protected by the freedom of expression. Such utterances should not draw a reaction from any part of the judiciary at all.

While certain providers such as twitter offer the possibility to block or delete an account under certain conditions, the judiciary should usually avoid this option. This might be considered as a last resort in severe cases where accounts are used for systematic defamation or even threats against individual judges.
Direct responses on unfair comments by the concerned judge or by the judiciary in general, however, carry a significant risk of being more harm than good.

Judges are generally expected to behave moderately and to practice restraint. A judge who reacts in person to unfair criticism, e.g. by answering an insulting tweet directly, brings her- or himself even more directly into the public view. Based on her or his own reply, a judge who responds to unfair comments about her- or himself might be seen as vulnerable and thin-skinned which may even result in doubts regarding the judge’s independence and impartiality. It must be taken into account that unfair comments about judges on social media may even be aimed at seducing a judge to reveal her or his personal thoughts or feelings, especially in light of a sensitive case the judge is handling. From a psychological point of view, unfair comments on social media could even be triggered if they elicited direct reactions of the concerned judges. In light of these considerations, judges should consider not answering directly to unfair comments on social media given about them.

Even if courts or other organs of the judiciary could theoretically reply to unfair comments on social media on behalf of the concerned judge, this seems to involve more risks than chances. This is largely due to the way social media works. The heading of a tweet generally receives more attention than a re-tweet. Hence the benefit of replying to unfair comments on social media is likely to be low. Furthermore, since unfair comments are generally just aimed at denigrating a judge, they do not seem to deserve any sort of answer that would merely elevate such comments. In addition, it does not seem to be within the scope of courts and judicial organs to reply individually to denigrative comments on social media, irrespective of the question whether any part of the judiciary would have any capacities to engage in answering such comments which can be countless.

Summarized, if individual comments amount to a criminal offence, the concerned judge or her or his court president could refer such comments to the prosecution offices (where that possibility exists), but judges as well as courts ought to refrain from answering such posts. A general advice cannot be given, though, since it depends on each case which reaction, if any, seems adequate.

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, in Germany there are no such rules.

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.

Twitter accounts are not yet widely used by German courts. If courts make use of this possibility mainly depends on the court president and the press officer(s) of the court. German courts nowadays usually employ one or more press officers.

The Federal Constitutional Court as well as the Federal Supreme Court use twitter to inform the public about significant cases. Their twitter messages themselves are rather short, comparable to headlines and subtitles, yet they include a link to the official press release on the court website that contains more detailed information.

Only few of the courts on the state (“Länder”) level use twitter. For example, the Cologne High Court has been actively using its twitter account to keep the public informed about decisions in a similar way as described above (short twitter message, link to the official press release). It recently also added information on activities and events of the court. The reactions on this offer have so far been rather positive. Where courts do make use of twitter, the usually only use it as another tool to keep the public informed, but does not use it in an “interactive” way by re-tweeting any post. This is mainly due to the fact that German courts only inform about their decisions and, in complex cases, press officers might explain them, but never comment on them.

Among the specialized courts, the Münster Finance Court recently introduced a podcast in order to communicate with the public. Other social media (facebook, Instagram, Snapchat or others) have not yet been used by German courts so far, at least not to an extent worth mentioning.

In Germany there are no binding rules regarding the use of social media by courts. The German data protection laws require courts to make any decisions anonymous before publishing them apart from the names of “persons of contemporary history” (such as proceedings regarding politicians). This is related to any form of publication and includes, where it is used, social media.

So far, German courts have not yet been criticized for disseminating information 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?

There are no specific rules on the use of social media by judges, neither related to professional use, nor to their private lives.

Every German judge is legally obliged by statute law to act in a way that ensures that public faith in her or his impartiality and independence is not imperiled. This obligation covers federal as well as state judges and includes judges’ behaviour in private life. Thus this legal provision can be regarded as a limit to the use of social media, as well as behaviour of judges in their work and private life in general.

For example, while being free to use social media, judges ought to be aware that their social media accounts on job networks such as LinkedIn should never be suggestive of the judge offering any kind of services since it might create within the public the impression of venality.

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?

Indeed there have been cases in which German judges were criticised by the media for contents they have posted on social media. Recently, two cases were especially significant:

In January 2015, criminal proceedings were opened at Munich High Court against three Syrian men for alleged membership in a foreign terrorist organisation. Some days before the beginning of the trial, a newspaper reported that the presiding judge of the panel had previously posted a photo of himself on his facebook account that showed him wearing a T-Shirt with the inscription “Fatih Sultan Mehmed – The Conqueror”. Fatih Sultan Mehmed was a Muslim commander who conquered Constantinopel from Christians in 1453. His impartiality in this trial was questioned, but it did not result in his dismissal as a judge in this case.

In another case in 2016, however, the private facebook post of a criminal court judge resulted in his judgment and sentence being overturned by the Federal Supreme Court. The judge had posted a photo of himself on his private facebook account that showed him wearing a T-Shirt that seemed making fun of imprisoning people, while holding a glass of beer in his hand; at the same time the facebook post referred to his job as a criminal court judge. At that time, the chamber presided by this judge found two men
guilty of kidnapping and sentenced them to several years in prison. The Supreme Court nullified that decision with the reason that the facebook post gave rise to serious concerns that the judge had not been impartial. Furthermore, the Supreme Court concluded that this facebook post that seemed to ridicule the imprisonment of people was generally incompatible with the position of a judge at a criminal court. The case was referred back to a different court for another trial.

It is not publicly known whether any of these judges also faced any sort of disciplinary sanction. However, if judges violate their legal obligation to act in a way that ensures that public faith in their impartiality and independence is not imperiled, such violations may even result in disciplinary sanctions.

There is no specific disciplinary body for cases related to social media. Generally, a judge can be sanctioned disciplinarily in Germany only if she or he has violated her or his legal duties. The hurdles for disciplinary sanctions against judges are quite high. A mere reproval may be issued by the court presidents, but any other form of disciplinary sanction against a judge would be subject to formal proceedings of disciplinary courts.