



Disciplinary Measures Consequent on the Judges' Misuse of Social Media in Jordanian and French Legislation: A Difficult Balance between Freedom of Expression and Restrictions on Judicial Ethics

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Abstract: This article deals with the disciplinary measure's consequent on judges' misuse of social media in Jordan and France. In fact, the research aims at approaching the disciplinary measures consequent on the judges' misusing the social media and stating at the cases that constitute a breach against the judicial job duties for which the issue of the study is in the extent of allowance of granting the judges the freedom to use social media and the extent to which judges publish their professional achievements, disclose their job information, comment on public opinion cases published on social media and participate in analysis and discussion. Yet, this study adopted the applied methodology for the variety of the legislations that have been different in dealing with sections and topics falling under this subject. In fact, the study concluded with several findings and recommendations, the most important of which is the necessity of subjecting judges in Jordan to adequate training on ethical principles to exercise basic freedoms, both in relation to their profession and in activities outside the scope of the profession while that this training shall include, in particular, practical guidance on the use of social media and the need to involve judges in Jordan when setting legislation and ethical standards related to the exercise of fundamental freedoms and political rights within the framework of an open and

transparent process, taking into consideration the existing international standards related to the exercise of fundamental freedoms and the jurisprudence of courts as well as the regional human rights mechanisms.

Keywords: judges; social media; disciplinary measures; fundamental freedoms; judicial conduct

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I. Introduction

Freedom of expression is a sensitive issue for the judicial authority. Actually, inappropriate statements can easily tarnish the image of the independence of the judicial authority in the eyes of the public. Therefore, it is important for judges to be extremely careful and exercise restraint in their relationship with the media and when they use social media. Hence, the question arises concerning the extent to which judges are entitled to enjoy freedom of expression, belief, affiliation and assembly, just like other citizens.

In fact, and as a general rule, members of the judicial authority have the right to freedom of expression like other civilians, but only on condition that they always act competently, in a manner that preserves the prestige of their office, a commitment to impartiality and integrity as well as the independence of the judicial authority in the exercise of these rights.¹

Hence, dealing with social media requires setting controls for judges' use of these means by providing practical guidance to achieve a fair balance between the basic rights of judges and the legitimate

¹ United Nations Human Rights. (2018). Social media: A challenging new platform for judges around the world: The main factors aimed at ensuring the independence of the judiciary: the first topic: Judicial independence: United Nations Office on Drugs and Crime, UNODC. Available at: <https://www.unodc.org/dohadeclaration/en/news/2018/11/social-media--a-challenging-new-platform-for-judges-around-the-world.html> [Accessed 03.08.2022].

interest of the state by ensuring the impartiality and independence of the judicial authority in addition to providing a practical means for judges to help them make their own decisions on how to exercise basic freedoms, whether online or offline, in a manner consistent with the prestige of the profession they practice and the independence as well as impartiality of the judicial position (Nushi and Al-Rubei, 2017, p. 41; Ben Azza, 2015, p. 12).

The importance of the study lies in the fact that it deals with the legal implications of judges' misuse of social media and the media. In fact, this study is one of the modern and important topics that have a significant impact on practical reality for which the researcher will pay attention to all aspects of the subject, whether theoretical or practical, and address the deficiency in the Jordanian Constitution, the texts of the Jordanian Judicial Independence Law and its amendments, the Code of Judicial Conduct in Jordan and the Jordanian Judicial Inspection Regulation.

This study aims to identify the legal consequences of judges' misuse of social media and the media in addition to showing cases that constitute a breach of the duties of the judicial function and a prejudice to the impartiality and independence of the judiciary as well as to indicate the extent of the judicial inspection body's control over the social networking sites of actual and fictitious judges and to highlight the responsibility disciplinary consequences of judges' misuse of social media and the media.

Hence, through this study we will try to answer the questions that are represented by two main issues. What are the cases that constitute a breach of the duties of the judicial function and prejudice the impartiality and independence of the judiciary? What is the disciplinary responsibility for judges' misuse of social media and media sites?

Yet, several sub-questions emerge from these main issues, the most important of which are: is it permissible for a judge to disclose his/her job information on social media? Does the judge have to obtain the approval of the Judicial Council before establishing an account on social media? Is it permissible for judges to use social networking sites when exercising their judicial functions? Is it permissible for a judge

to comment on public opinion cases published on social media and to participate in analysis and discussion?

Accordingly, the comparative and the analytical approach will be adopted in this research to analyze all provisions of legislation related to the subject of this research in order to identify its contents, implications, and objectives, then criticize and comment on it, and highlight the differences between those provisions, and knowing the strengths and weaknesses of these different trends, and the extent of which they are considered, and highlighting the critical aspect of the researcher, where this research necessitated the use of several research methods due to its complex nature among the texts of the law, the viewpoints, the jurisprudential trends (Malkawi, 2018, p. 13; Al-Billeh, 2022a, p. 489).

II. Cases that Constitute Misuse of Social Media in Jordanian Legislation

The behavior of judges on social media platforms is visible to the public and any comment or statement published by the judge should renew people's confidence in the judicial authority and not conflict with the prestige of his position or with the independence and impartiality of this authority for which judges should ensure that their expression does not affect their opinions or their personal beliefs negatively on their official duties and not to raise doubts about their impartiality and duties that require them to show fidelity and responsibility towards their office (Gibson, 2016, p. 3). Further, judges must always respect and honor the judicial office when expressing their views and opinions on the Internet as well as to strive to maintain and enhance confidence in the judicial system (Mahmoud and Chiha, 2020, pp. 110–111). Yet, that they shall avoid engaging in any electronic activity that might undermine the public's confidence in the judiciary or raise doubts about its independence and impartiality (Fisher, 2019, p. 9).

Codes of professional conduct developed by professional associations have also contributed to the development of detailed standards for self-regulation that help judges make their own decisions about ethical choices in their professional and personal lives. However, there are few codes of ethical conduct that address issues related to the use of social

media. In fact, the lack of appropriate guidance has led to an increase in the number of “unintended” violations of the standards of professional conduct for judges, and at the national level, there is an increasing number of professional associations working to develop guidelines and provide training opportunities for their advocates on issues related to the use of social media (Mahmoud and Chiha, 2020, pp. 110–111).

Actually, only a few countries have established specific legislation or ethical standards to regulate the conduct of judges on social media platforms and media, and in some countries, professional associations of judges have implemented a number of activities to raise awareness of the risks associated with exercising their right to freedom of expression on the Internet, particularly on social media while other countries are updating their legal codes and establishing ethics bodies to clarify the issue of members of the judiciary’s participation in social media (Al-Banna, 2013, pp. 16–17; Al-Billeh, 2022b, p. 120).

II.1. The Judge’s Non-Observance with All the Provisions of the Code when Dealing with Social Media

When dealing with social media, the judge must take into account all the provisions stipulated in the Code of Judicial Conduct, 2021, so that the judge must observe all provisions of the Code when dealing with social media. Among these provisions, the judge must take into account when expressing his/her actions or behavior by any means, including social media, without affecting the sanctity of his/her message (Ben Azza, 2015, pp. 12–13).

In fact, we note here that Art. 10/1 of the Code of Judicial Conduct described above has obligated judges to observe all provisions of the Code of Judicial Conduct when expressing their behavior and acts in one of the social media to the effect that any publications published through those means do not contradict with the prestige and independence of the judiciary, so the criterion is an objective and not a personal criterion which assessment is attributed to the Judicial Council as to whether those publications that were published on social media are incompatible or inconsistent with the prestige and independence of the judiciary.

II.2. The Judge's Announcement of His/Her Capacity on Social Media Platforms

The judge must not announce his/her capacity on social media platforms, as Art. 10/2 of the Code of Judicial Conduct for the year 2021 states, "The judge must not announce his/her capacity on social media platforms."

In fact, one of the manifestations of the judges' commitment to preserve and maintain the prestige of the judiciary when using social media is that they do not disclose their judicial function through these means, except in appropriate places while not exploiting that function (Al-Hilali, 2018, p. 113).

Therefore, it is noted that when the judge creates an account on social media, and when reaches the job selection box, he/she must leave it blank and not indicate that he/she is working as a judge while the importance of that ban appears so that judges are not exploited when revealing their job through social media.

II.3 The Judge Publishes His/Her Rulings on Social Media

Judges must not publish or comment on rulings issued by them or others in any medium, including social media (Cooper, 2017, p. 523), and that the legal wisdom of this obligation is not to disclose the confidentiality of deliberations and to respect the rules for publishing and commenting on rulings for which Art. 10/3 of the Code of Judicial Conduct of 2021 states, "The judge shall refrain from publishing the rulings issued by him/her or others or commenting on them on social media."

In fact, part of the jurisprudence sees that publishing trials is a branch of publicity as long as the law does not prohibit publication and allows newspapers to publish the details of the pleadings that take place in cases as well as the pronouncement of the judgments issued in them as the purpose of publicity is to monitor the work of the courts, enhance confidence in the judiciary and urge judges to take great care in their judgments (Abdel Qader, 2012, p. 22), except that if the session is

confidential, then the trial procedures may not be published except for the judgment, so the judge may disclose and comment on confidential information in the case entertained before him/her or other fellow judges through social media which, in that case, constitutes a breach of the duties of the judicial office and a violation of the impartiality and independence of the judiciary (Somers, 2019, p. 16).

Actually, and in this case, it becomes clear that the judges must not publish any rulings issued by them through social media that are visible to the public, so that this case includes not only the provisions but also the preparatory decisions and the draft rulings because this reveals confidential information in addition to that this constitutes a violation of the privacy of the parties to the case which constitutes a violation of the impartiality and independence of the judiciary.

II.4. The Judge Expressing an Opinion or Exchanging Any Information through Social Media Sites

The judge shall not express an opinion or exchange any information through social media sites that would prejudice his/her impartiality, integrity, courteousness, decency and independence of the judiciary, whether he/she uses his/her real name or his/her capacity as a judge or otherwise under a nickname (Kurita, 2017, p. 189), as Art. 10/4 of the Code of Judicial Conduct provides, “A judge must refrain from expressing an opinion or exchanging any information on social media that would prejudice his/her impartiality, integrity, courteousness, decency and the independence of the judiciary, whether he/she uses his/her real name, his/her capacity as a judge, or under a nickname.”

Yet, it should be noted that the technical and technological development of social media has led to the emergence of fake accounts that some judges intend to create on social media pages for which accounts belonging to a number of judges, but with other names, can be noted, either revealing a strictness in dealing with them and placing them under supervision and judicial inspection, or their desire to stay out of the spotlight and follow-up, with the exception of a few who use their real name and publish their pictures which phenomenon places

the judicial inspection body in front of the responsibility of studying fictitious cases, bearing in mind that the judge has the right to use social media, whether to interact with friends, follow the news of the time and keep up with people's concerns, or even to investigate information with limited controls that can be placed on him/her, but the Judicial Council should be aware at the same time, of the dangers of creating accounts for judges with fake names, which opens the way for piracy or fraud in a way that harms the judiciary and its standing as well as the judge himself/herself (Abdel Qader, 2012, p. 21).

However, the administration of Facebook, Instagram and Twitter worked to launch a blue authentication badge that appears next to the names of the real account holders of important and influential people, and this service aims to enable users to know the fake accounts from the real ones, and whether the account is authenticated by them for which the badge appears next to the name on the account profile and next to the account name in the search results which are always of the same color and are placed in the same place regardless of the theme or profile color customizations for which accounts that do not have the logo next to the name and that are displayed elsewhere, e.g., the profile picture, the back picture or the profile itself are considered as the unverified accounts (Al-Hilali, 2018, p. 106; Al-Billeh, 2022c, p. 11).

Therefore, we note that the issue of fake social media accounts is an important issue, as some judges may create an account under a nickname and publish through matters this account that affect the reputation and independence of the judiciary. Therefore, the judicial inspection body at the judicial authority must be aware of these accounts and monitor them, which is difficult and complicated but not impossible as some social media accounts, when created, ask for personal information about the person, such as a phone number and a personal email for which it is easy for the judicial inspection body to reveal them as information belonging to a judge, but the difficulty appears when using personal information belonging to other people with their consent.

II.5. Lack of Caution by the Judge in His/Her Words and Style when Using Social Media

Judges should be careful in their words and style when using social media and the impact of their participation through these means on the prestige of the judiciary as well as the observance of professionalism and dignity in publishing, commenting, posting the status, pictures or other matters (Browning, 2014, p. 490), as Art. 10/5 of the Code of Judiciary Conduct in Jordan for the year 2021 states, “The judge must be careful in his/her words and style when using social media and should evaluate the impact of his/her participation through these means on the prestige of the judiciary before doing them in addition to being professional and solemn in publishing, commenting or posting the status, photos or other things.”

Therefore, the judge must be careful when using social media not to harm his/her reputation or the prestige and reputation of the judiciary while his/her behavior when using social media should be above suspicion that he/she is respected in the eyes of citizens (Katrina, 2019, p. 796).

Hence, the judge’s lack of caution in his/her expressions and style when using social media can be considered a violation by the judge when using his/her words and his/her way of expressing his/her opinion (Al-Tamimi, 2020, pp. 10–11), so if the judge wants to express his/her opinion through social media, then his/her posts through these means should not affect the prestige of the judiciary, professionalism and dignity by publishing, commenting or posting the status, photos and videos.

II.6. The Judge Discusses the Merits of a Case Entertained before Him/Her through Social Media

Judges must not discuss the merits of a case entertained before them and to investigate its parties and witnesses through social media which affects their judgment (Singh, 2016, p. 154), as Art. 10/6 of the Code of Judicial Conduct in Jordan for the year 2021 provides, “The judge must refrain from discussing the merits of a case entertained before him/

her in addition to the investigation of its parties and witnesses through social media to avoid affecting his/her judgment.”

In fact, this prohibition is due to the fact that the judge must demonstrate high standards of judicial behavior in order to enhance citizens' confidence in the judicial system, which is a basis for maintaining the independence of the judiciary for which and the judge's behavior through social media platforms must be above suspicion in the eyes of citizens (El Moumni, 2019, p. 27).

Therefore, it must be noted that the judge's research on the merits of a case entertained before him/her and the investigation of its parties and witnesses through social media, which affects his/her judgment constitutes a violation of the independence of the judiciary and a prejudice to the prestige of the judicial system as the judge's research into the merits of a case entertained before him/her encroaches his/her impartiality other than losing the confidence of the people (Al-Bayati, 2015, pp. 42–43). Further, this is also considered a violation of the legal methods that the judge must follow in serving witnesses and the parties to the case by virtue of written service process issued by a competent authority in the judicial system.

II.7. The Judge does not Write Off Any Contents in His/Her Personal Account

Judges must delete any contents available in their personal account prior to their appointment to the judiciary that would affect their independence and impartiality or cause the confidence of citizens to be lost, as Art. 10/7 of the Code of Judicial Conduct in Jordan for the year 2021 provides, “The judge must write off any contents available in his/her personal account being precedent to his/her appointment to the judiciary that could affect his/her independence and impartiality or his/her loss of citizens' trust in a way that that it will not be restored for sure.”

Therefore, the judge must review the policies of the social media platforms he/she uses, their systems and the security as well as privacy settings approved by that platform, periodically review them and exercise caution in order to ensure and maintain personal, professional

and institutional integrity (Zaghdoudi, 2019, p. 31). In addition, it is recommended that the judge not make any comment or engage in any conduct on social media that may be embarrassing or inappropriate, that the judge be aware of the risks arising from sharing personal information on social media and be aware of the privacy as well as security risks arising from disclosing their location or any similar information directly or indirectly through posts on social media.²

Therefore, the judge appointed in the judiciary should review the settings of the judge's account by deleting any contents in his/her personal account prior to his/her appointment in the judiciary that would affect his/her independence and impartiality or cause the confidence of citizens to be lost or otherwise make those contents private so that no one can view the same.

II.8. The Judge Responds to the Abuse He/She is Exposed to on Social Media

Judges must not respond to the abuse he/she is exposed to through social media for which they must refrain from responding to the same while they must report to their president to take the necessary measures, as Art. 10/8 of the Code of Judicial Conduct in Jordan for the year 2021 provides, "If the judge is offended through social media, then he/she must refrain from responding to the same while he/she must resort to his/her superior to take the necessary measures."

Therefore, if the judge is insulted or abused through social media, then he/she must seek advice from his/her superior to take the necessary measures while he/she should not respond directly to those insults and abuses (Al-Dala'in, 2019, p. 39).

Accordingly, it is not permissible for a judge who has been subjected to abuse through social media to respond, but rather he/she must resort to his/her superior. Hence, and in the event that he/she is a magistrate's judge or a first instance judge, then he/she must report to the president of the court while if he/she is an appeal judge, then he/she must report

² United Nations Human Rights, (2020). Non-binding Guidelines for Judges Use of Social Media: Global Judicial Integrity Network, Doha. Available at: <https://www.unodc.org/ji/ar/knowledge-products/social-media-use.html> [Accessed 03.08.2022].

to the president of the court of appeal and if he/she is a cassation judge, then he/she must report to the president of the Judicial Council and present the subject of the offense to him/her, so that the president takes the necessary measures and addresses the official authorities to bring a case against the person and to transfer him/her to the competent courts.

II.9. The Judge Publishes Topics that Demonstrate His/Her Religious and Social Tendencies through Social Media

Judges are committed not to publish topics that demonstrate their religious and social tendencies or their support for certain parties on social media whereby this does not affect the appearance of his/her impartiality and harm the integrity of the judiciary as well as the confidence in the judicial authority (McPeak, 2019, pp. 211–212), as Art. 10/9 of the Code of Judicial Conduct in Jordan for the year 2021 provides, “The judge must refrain from publishing topics that demonstrate his/her religious and social tendencies or his support for certain parties on social media whereby this does not affect the appearance of his/her impartiality and harm the integrity of the judiciary as well as the confidence in the judicial authority.”

In explanation of this, if the judge publishes topics that demonstrate his/her religious and social tendencies or his/her support of certain parties through social media, then he/she loses the confidence of citizens placed in him/her in addition to that this may violate the principle of impartiality, which may expose him/her in the future to a response by the parties to the litigation or the obligatory stepping aside or even the optional stepping aside if he/she feels embarrassed which will disturb the functioning of the judicial system.

II.10. The Judge's Use of Social Media to Promote Financial Interests

Judges should not use social networking sites to promote the financial interests of himself/herself or others, either directly or indirectly, as Art. 10/10 of the Code of Judicial Conduct in Jordan for

the year 2021 states, “A judge is prohibited from using websites of social media to promote the financial interests of him/her or others, whether directly or indirectly.”

Therefore, judges should ensure not to use their social media accounts, either directly or indirectly, to advance their own or others’ financial and business interests (Ezzat, 2012, p. 23).

Hence, it is noted that the judge’s exploitation of social media in order to benefit himself/herself or others financially, whether directly or indirectly, constitutes an explicit violation of the principle of impartiality and that of independence of the judiciary. In addition, that these actions are inconsistent with the obligations and duties placed on the judge not to participate in any business that generates other income for him/her.

II.11. Making Statements through Various Visual, Audio or Written Media or Websites

As a general principle, judges should not immerse themselves in public contentious issues, but there are limited instances in which they can express their views and opinions on politically sensitive matters (Schmidt, 2019, p. 36), for example when they participate in public debates on legislation and policies that could affect the judges or when there is a threat to democracy and the rule of law when it is the duty of judges to speak out to defend the constitutional order and restore democracy (Al-Daqqaq, 1976, pp. 17–18). Also, judges must exercise caution in their relationship with the press and to always avoid commenting on the cases they are entertaining and making any unjustified comments would raise doubts about their impartiality, decency and fitness in sharing any personal information or photos on social media for which judges should always avoid making partisan political comments and never publish anything that might conflict with the prestige of their office or otherwise effect on the judiciary (Boothe-Perry, 2014, p. 73).

Yet, Art. 11 of the Code of Judicial Conduct in Jordan for the year 2021 states, “The principle is that “a judge must observe the sanctity of his/her message when expressing his/her opinions through the media”

for which a judge is prohibited from making statements, information and opinions through various visual or audio media, written documents or websites, except with the prior approval of the President of the Judicial Council.”

Therefore, it turns out that if the judge wants to appear through the media, then he/she must obtain the written approval from the President of the Judicial Council, given that the media are visible means for everyone at the national and global level, and that the judge must be careful not to comment on cases being considered or making any unjustified comments that would raise doubts about his/her impartiality in addition to exercising caution in sharing any personal information or photos on social media.

III. The Freedom of Judges to Use Social Media with the Duty of Reservation in French Legislation

International treaties signed and ratified by France and French legislation set special procedures for dealing with social media and the media. Hence, Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 provides under “Freedom of expression” that: 1 — Everyone has the right to freedom of expression and that this right includes freedom of opinion and freedom to receive or impart information or ideas without interference from public authorities without regard to limitations but this article does not prevent states from subjecting broadcasting, cinema or television companies to the licensing system. 2 — The exercise of these freedoms and the duties and responsibilities they include may be subject to certain transactions, conditions, restrictions or penalties prescribed by law and which are necessary measures in a democratic society for the purposes of the national security, territorial integrity, public safety or the protection of order and the prevention of crime or for the protection of health or morals, to protect the reputation or rights of others, to prevent disclosure of confidential information or to ensure the authority and impartiality of the judiciary.”

Further, Art. 11 of the Charter of Fundamental Rights of the European Union, 2016, and under “Freedom of Expression and Informa-

tion” states that: “1 — Everyone has the right to freedom of expression, which right includes freedom to hold opinions and to receive and impart information and ideas without interference from public authority and regardless of limitations. 2 — The freedom and the pluralism of the media should be respected.”

Hence, based on the foregoing, the French legislator has developed a judicial code of conduct for the ordinary judiciary and a code of judicial conduct for the administrative judiciary. As for the code of judicial conduct of the ordinary judiciary, Art. 15-F of the Compendium of the ethical obligations of magistrates for the year 2010 and its amendments provides, “The judge’s expression of his/her views in his/her official capacity, regardless of the media that is open to the public, requires the utmost precaution in order not to prejudice the reputation and credibility of the judicial institution. Yet, the same applies to judges publishing their personal professional memoirs.”

In fact, and by referring to the rulings of the French civil judiciary, and in a recent ruling of the French Court of Cassation-Civil Chamber II No. 1 dated 5 January 2017, regarding the acceptance of friendships on social networks (Facebook), then it ruled that “At a time when its sovereign authorities are evaluating the extent of the validity of the alleged grounds for the appeal, the Court of Appeal held that the term “friend” is used to refer to persons who agree to be in contact with social networks and does not refer to friendships in the traditional sense of the word and that the existence of connections between these different people through such networks is not sufficient to describe a particular bias, then the social media is just a means of specific communication between people who share the same interests, and in this case, the same profession” for which that the petition to dismiss is unfounded.”³

Also, the French Supreme Council of the Judiciary, in its capacity as a disciplinary council for judges, ruled, in its judgment No. S212 issued on 30 April 2014, “Where Mr. X admitted that he was the author of the four letters mentioned above; and that he specified that the first three had been taken up during the suspension of the session, and that

³ Judgment No. 1 dated 5 January 2017 (16-12.394) — Court of Cassation — Second Civil Chamber — ECLI: FR: CCASS:2017:C200001, “Claimant(s): Mr. Yann, X... Defendant(s): Attorney General at the Paris Court of Appeal On the single plea.

they constituted a kind of derivation to express something... and where Mr. X solemnly objected that during the session, he had sent the last message: I have not enjoyed since the last two hours; and that he was probably at home when he read and replied to Mr. C; and he described his letter to the rapporteur as being a joke, indicating in the council session that he was always received the necessary attention during the criminal court procedures; while Mr. X explained his behavior by trying to relieve the pressure, explaining that when he encountered problems, he always tried to get out of it with humor; he confirmed that he had, on this social network, 4,000 subscribers or 'followers' who were likely to read these messages, while justifying that these tweets were necessarily anonymous; nevertheless, the judge recognized the act of humor in sharing his mood on Twitter; as Mr. X admitted to the Inspectorate General of Judicial Services by publishing other messages for the next two days, but did not remember that they were related to the hearing; and that the investigation did not prove otherwise, while under the first paragraph of Art. 43 of the above-mentioned order of 22 December 1958, denoting that 'Any breach by a judge of the duties of his/her office, or of honor or dignity, constitutes a disciplinary default;' and that, if the principle of freedom of expression benefits judges as well as any citizen, its exercise, whatever the mode, must be applied to a judge respecting his/her job duties; while the use of social media, including under nicknames, cannot absolve the judge from the duties of his/her jurisdiction, in particular from his/her obligation to uphold the right, and the pledge of impartiality, especially during the course of the trial; and that such use is inappropriate because the messages exchanged can be read in real time by people outside the judicial institution and they make it possible to identify their authors and the circumstances of their motives."⁴

With regard to the Code of Judicial Conduct of the Administrative Judiciary in France, Art. 47 of the Code of Ethics for the French Administrative Judiciary / Principles and Best Practices issued on 14 March 2017 and amended on 16 March 2018 states, "The greatest degree of self-control must be taken into account when using social

⁴ Superior Council of the Judiciary ruling as a disciplinary council for magistrates of the seat, S212, 30 April 2014.

networks on the Internet when access to these networks is not restricted exclusively to a private circle with protected access. The risks associated with unlimited data archiving and filtering search capabilities that may make it possible to publish personal relationships or private opinions that may raise doubts about impartiality between the public and the media will be considered in the judge's personal consideration. Further, the account of the social network must be monitored by its user, who acts as the publisher of the content... Therefore, the obligation of professional confidentiality and strict respect apply fully to the expression of members of the administrative jurisdiction on social networks and this is regardless of whatever are settings of the network used or the number of contacts of the account holder. Yet, the information transmitted on a social network account is likely to constitute private communications only when the user has previously and correctly created this account to control access and ensure the limited number of reliable communications. In any case, the user is recommended to adjust his/her account settings so that his profile does not appear in the results of search engines. Further, members of the judiciary who are on digital social networks should not mention the type of work of a judge or member of the State Council when they reach their profile. Yet, if such clarification is self-evident on social networks, then the user must be alert about the content he/she posts and the direct or indirect exchanges he/she maintains with his/her contacts. In any case, it is advisable to refrain from participating in any controversy in view of its subject or nature, which is likely to reflect on the institution. In addition, members of the administrative authority who are on social networks under a nickname are subject to re-identification by keeping only notes that they can bear publicly under their real identity. In fact, and in view of the presumed public character and privacy of digital social networks, it is recommended that members of the Administrative Court not use these media for the purpose of commenting on political and social news... Members of the Administrative Court, when they share a message on social networks or when expressing their adhesion in different forms of a message, should exercise caution in addition to paying the attention by the members of the Administrative Court when giving lectures, attending conferences or hearings, whether they are

filmed or not, which leads to the spread of rumors and their distribution by third parties leading to positing excerpts of their words via video or audio, especially on social networks or the Internet.”

In fact, and by referring to the judicial rulings related to members of the administrative judiciary in France, the French Council of State ruled, in a recent ruling issued on 25 March 2020, that “With regard to legal and administrative news, members of the administrative judiciary must take into account, in the comments that they post on social networks with ‘reservation and vigilance equal to that which involves publication in a scientific journal.’ In fact, these recommendations, formulated as best practices, with regard to expression on social networks and taking into account the technical characteristics of expression patterns, aim to ensure compliance and adherence to the conservation required of members of the administrative authority judiciary, which aims to prevent the publication of their observations to avoid harming the nature and dignity of the jobs they practice and to ensure the independence, impartiality and proper functioning of the work... Yet, the critical paragraphs also indicate that information published on a social network account cannot constitute private correspondence unless the user has configured this account correctly in advance in order to control access and ensure the limited number and reliability of contacts, and in doing so, the Charter recommends that members of the administrative authority judiciary who use social networks modify their account settings so that their profile does not appear in search engine results and recommends not to mention the words judge or member of the State Council when completing their profile on a non-professional social network. In fact, these recommendations of wisdom do not have the effect of prohibiting the expression of members of the administrative authority on social networks... and are only intended to protect members of the administrative judiciary from the risk of receiving comments posted on social networks... The best practice recommendations thus set forth aim to ensure compliance with the conservation obligation on social networks, and do not directly affect the freedom of expression of members of the Administrative Court. In fact, the criticizing clauses of the charter recommend members of the Administrative Court, ‘taking into account the supposed public nature and the privacy of digital social

networks,’ ‘not to use these media for the purpose of commenting on political and social news.’ This cautionary statement takes into account the technical characteristics of public online communication networks in general and social networks in particular as well as the difficulty sustained by a user posting comments to ensure their privacy or limited dissemination as well as to ensure their integrity or to control their scope, taking into account in particular the reactions that may provoke.”⁵

Therefore, it is noted from the foregoing that the French legislator developed detailed legislation showing the mechanism for dealing of judges with social media for ordinary judges and administrative judges for which it developed special provisions for the mechanism of how ordinary judges deal with social media and others showing the mechanism of how administrative judges deal with social media to the contrary of which the Jordanian legislature did not set special provisions for administrative judges, but considered the administrative judiciary as an integral part of the regular (ordinary) judiciary whereby the same provisions contained in the Code of Judicial Conduct apply to administrative judges in addition to the fact that the constitutional judiciary in Jordan also did not regulate the mechanism of using of the members of the Jordanian Constitutional Court for social media in the Code of Conduct for Constitutional Court judges.

IV. Extent of the Judicial Inspection Authority’s Control on the Judges’ Social Media Sites (Real and Fictitious)

Control on social networking sites is based on a set of legal considerations while this control may be prior (preventive control) before publishing on social networking sites or post-publication on those sites (Alnoaimy, 2019, p. 266).

In fact, judges have special duties and responsibilities that justify imposing specific restrictions on their fundamental freedoms, but these restrictions are only legitimate if provided for by law and necessary in

⁵ Council of State, No. 421149 ECLI: FR: CECHR: 2020: 421149.20200325. Published in the Lebon collection, 4th — 1st chambers combined, Mrs. Céline Roux, rapporteur, Mr. Raphaël Chambon, public rapporteur, Reading of Wednesday 25 March 2020.

a democratic society to achieve a legitimate goal, such as protecting the independence, impartiality and prestige of its institutions.⁶

Yet, the Judicial Inspection Body undertakes the following tasks: A. Inspecting the work of judges who are not in the highest rank provided that the inspection is at least twice a year for judges on probation, and at least once a year for other judges; B. Evaluate the work of judges in terms of good application of the law, completion of litigation and proof procedures, reasons for postponement, the time taken to resolve the case, fulfillment of decisions and judgments for its reasons and causes, the integrity of the results reached and determining the annual dismissal rate of the judge; C. Inspecting the work of the regular courts at least once a year, including attending court sessions and preparing reports thereon; D. Inspection on the works of the Public Prosecution; E. Investigate complaints referred to it by the President” (Art. 4, The Judicial Inspection System of the Regular Courts, 2015).

In fact, the Jordanian Supreme Administrative Court ruled, in its judgment No. 141/2018 issued on 11 July 2018 to the effect that “by applying what was mentioned to the facts of this case, it appears that the Chief Inspector of the Judicial Inspection Body addressed the President of the Judicial Council, proposing to refer some of the judges, including the petitioner, to the committee formed under Art. 15 of the Law on the Independence of Judges, to look into their matter, as it was found by examining the papers and files available at the Judicial Inspection Department that some of them had some faults in their behavior and that their performance had stopped at this point while it is not hoped to improve. Yet, and in light of what was stated in the letter of the chief inspector and because there is justification for presenting the matter to the committee formed under Art. 15 of the Law on the Independence of the Judiciary, especially since the appellant had previously, during his service in the judicial system, been issued three disciplinary penalties, the first being a warning penalty dated 20 October 2010 and the second

⁶ United Nations Human Rights, (2019). General Assembly, A/HRC/41/48, Independence of judges and lawyers — Report of the Special Rapporteur on the independence of judges and lawyers: Human Rights Council. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/118/68/PDF/G1911868.pdf?OpenElement> [Accessed 06.08.2022].

being downgrading dated 20 May 2013 while the third was a forewarning on 11 April 2017, then the head of the Judicial Council convened this committee in its legal formation to meet, and after deliberation, the committee recommended referring the petitioner to the early retirement based upon which the head of the Judicial Council recommended the same to the Council which issued its challenged decision after it decided to adopt the recommendation of the committee and that of the president with its authority concerned with running the affairs of the judiciary in a way that achieves the public interest.”⁷

As for France, the French Consultation State Council, as a judicial authority (Disputes Department) ruled, in its ruling issued on 23 March 2018 that: “The first article of the challenged ruling establishes a General Inspectorate for the Judiciary at the Custodian of the Seals, the Minister of Justice while the General Inspectorate exercises a permanent mission represented by the inspection, control, study, advice and evaluation of all bodies, administrations, institutions and departments affiliated with the Ministry of Justice and judicial courts as well as the legal persons from the public sector subject to the tutelage of the Ministry of Justice and legal persons under the tutelage of the private sector whose activities fall within the functions of the Ministry of Justice or do receive public funding to which the programs of the Ministry of Justice contribute in addition to evaluating the activity, work and performance of courts, institutions, departments and bodies under its control as well as the manner of service of employees, as part of an investigative mission. Further, it makes all useful recommendations and observations.” On the one hand, if Art. 8 of the challenged decree states that inspectors general, inspectors from among judges, members of the staff of directors of the Ministry of Justice and members of staff employed by the National School of Administration or the of same level of employment may be employed, nevertheless Art. 14 and 15 of it provide that the operations of inspection and control of the courts of the judiciary is carried out by inspectors general and inspectors who have the capacity of a judge while the investigations into the professional and,

⁷ Supreme Administrative, Khaled Alyan v. Jordanian Judicial Council, 11 July 2018, D 2018, 141 (The Jordanian Supreme Administrative).

where appropriate, personal conduct of judges may be carried out only by inspectors general or inspectors having the capacity of a judge and should be interpreted as requiring one of them to have a rank at least equal to the rank of the judge concerned.”⁸

Therefore, it turns out that the judicial inspection body in both Jordan and France are considered one of the important organs in the judiciary while its importance is shown in revealing and proving facts in addition to preserving the independence of the judiciary, monitoring the social media of judges and detecting fake accounts created by judges.

V. Initiating a Disciplinary Case when Judges Misuse Social Networking Sites

Social media occupy an important place in the daily lives of citizens around the world including the judge, and represent a great tool for public awareness and education for which it can contribute to enhancing public confidence in the judiciary (Jahn, 2019, p. 41), but its use can generate new challenges and ethical concerns regarding the validity of the content of the published material, the unintentional manifestation of bias or inclination and the unintended consequences arising from the judge's interaction with other parties (Hajjar, 2017, p. 14).

Filing a disciplinary case if judges misuse social networking sites is one of the most important measures that raise the level of quality of the judicial system and ensure the proper functioning of the judicial process (Lackey and Minta, 2012, p. 150). Otherwise, the efforts made by the judicial inspection body to follow up and monitor violations and abuses would not have any benefit. Yet, monitoring and follow-up aims to hold judges accountable for negligence and transgression in judges' use of social media and media (Al-Safadi, 2019, pp. 33–34).

Also, it should also be noted that an independent authority, such as a judicial council, prosecutorial council or court, should be invoked in the event of any accusation or complaint made against a judge regarding the exercise of fundamental freedoms and disciplinary measures should be determined in accordance with the law, the code

⁸ The French Consultation State Council, as a judicial authority (Disputes Department), Syndicat Force Ouvrière Magistrats, 23 March 2018.

of professional conduct and other well-established standards as well as ethical codes. Further, professional associations of judges shall establish advisory and consultant boards to advise judges when in doubt as to the compatibility of the exercise of a particular activity in the private sphere with their responsibilities and duties while such advisory bodies shall be independent of those responsible for imposing disciplinary sanctions.

V.1. Procedures Used to Initiate a Disciplinary Case Related to Judges' Misuse of Social Media

Judges are sometimes subject to disciplinary sanctions, including suspension and removal from office for exercising their right to freedom of expression, either alone or with others in a courtroom or otherwise on a social media platform and in the vast majority of cases, disciplinary measures are applied based on an alleged breach by judges of the duties binding on them, especially the exercise of restraint in the exercise of their fundamental freedoms in order to preserve the prestige of their position and the impartiality as well as independence of the judiciary (Eltohamy, 2016, p. 254). However, there are cases in which interference with the exercise of their fundamental freedoms cannot be considered necessary in a democratic society to achieve a legitimate objective such as maintaining public confidence in the judiciary (Saadoun, 2017, pp. 22–23).

With regard to disciplinary case procedures related to judges' misuse of social networking sites in Jordanian legislation, the disciplinary case is filed against the judge with a statement containing the accusation or charges made against him/her and the evidence supporting them submitted to the Disciplinary Council to initiate the procedures within a period not exceeding fifteen days from the date of submitting the statement to it. Then, the Disciplinary Council conducts whatever investigations it deems necessary and it may delegate one of its members to do so while the Disciplinary Council or the member it delegates has the authority entrusted to the courts with regard to summoning witnesses it deems necessary to hear their testimonies or request any other evidence. Yet, and after completing the investigations, if the disciplinary board does not find a reason to proceed with the case,

it shall decide to close it. Further, and if the Disciplinary Council finds a reason to proceed with the case for all or some of the violations, it shall instruct the judge to appear for the trial provided that the period between the summons to appear and the date of the trial shall not be less than seven days while the summons shall include a sufficient statement of the subject matter of the case and the evidence of the accusation (Art. 32, The Judicial Independence Law, 2014).

Actually, the disciplinary case related to judges' misuse of social media ends with the judge's resignation and acceptance by the council or by referring him/her to retirement or early retirement, as Art. 33 of the Jordanian Judicial Independence Law and its amendments provides that: "The disciplinary case ends with the judge's resignation and the council's acceptance of it or his/her retirement or early retirement."

Actually, the Jordanian Supreme Administrative Court ruled, in its judgment No. 158/2016 dated 24 May 2016 to the effect that "we find that the Disciplinary Council provided the opportunity for the appellant to plead, and thus the allegation of the claiming depriving the appellant of pleading and further abuse of power and violation of the principles as well as the rules of the right of sacred defense guaranteed by laws is contrary to the truth and reality and what was contained in the case papers, noting that the Disciplinary Council took into account all the procedures that must be followed in the disciplinary trial in terms of asking the appellant about what was assigned to him and discussing the witnesses of the Public Prosecution as well as submitting a written defense statement and personal defense evidence in addition to the oral pleading... yet, and where the aforementioned was referred to the Disciplinary Council, which, after completing the disciplinary trial procedures, imposed the appropriate penalty and recommended to the Judicial Council for imposing a penalty of one degree demotion, as the Judicial Council decided... based on the recommendation of the Disciplinary Council and based on Art. 25/B of the Judicial Independence Law, to downgrade the appellant's grade."⁹

As for the French legislation, the Minister of Justice who has considered a complaint or has become aware of facts likely to lead to dis-

⁹ Supreme Administrative, Iyad Anwar v. Jordanian Judicial Council, 24 May 2016, D 2016, 158 (The Jordanian Supreme Administrative).

ciplinary action, may, if there is an emergency and after consulting the heads of the hierarchy, propose to the Supreme Judicial Council, to prohibit the court judge who is subject to an administrative or criminal investigation from exercising his/her duties until a final decision is issued regarding disciplinary measures. The Supreme Judicial Council considers the facts that permit taking disciplinary measures directed to him/her by the Keeper of the Seals, the Minister of Justice. The Supreme Council of Judges also considers the facts that justify the disciplinary measures addressed to it by the first presidents of the Court of Appeal or the presidents of the Supreme Court. Copies of the documents shall be sent to the Custodian of the Seals, the Minister of Justice, who may call for an investigation by the Inspectorate General of Justice. Yet, and upon referral to the Supreme Judicial Council, the first president of the Court of Cassation, in his capacity as the head of the Disciplinary Council, appoints a rapporteur from among the members of the Council. He orders him, if necessary, to conduct an investigation. The Supreme Judicial Council may prohibit the accused judge, even before being notified of the investigation file, from exercising his/her duties until a final decision is issued. Yet, and during the investigation, the statements of the concerned judge shall be heard from a judge of a rank at least equal to the rank of the accused judge. The judge shall have the right to present his/her defense in writing or orally while he/she shall have the right to discuss witnesses and may request an expert opinion” (Art. 50, 51, Ordinance on the organic law relating to the status of the judiciary, 2019).

Accordingly, it is clear that the investigation with the judge in Jordan and France, whose misuse of social media is proven, is carried out in accordance with procedures defined by law taking into account the guarantees of the investigation, the right to question and the summoning of witnesses. The disciplinary board or the member delegated by the authority authorized by the courts with regard to summoning witnesses deemed necessary to hear their statements or request any other evidence and after completing the investigations, and if the disciplinary board does not find a reason to proceed with the case, may decide to close it while this constitutes one of the guarantees of the investigation with the judge.

V.2. Confidentiality of Disciplinary Hearings for Judges' Misuse of Social Media

All judicial disciplinary hearings related to judges' misuse of social networking sites are confidential and may not be disclosed, as Art. 34/A of the Jordanian Judicial Independence Law and its amendments provides: "The disciplinary hearings shall be confidential, and the judge shall appear in person before the Disciplinary Council or be represented by one of the judges from Judges who are not judges of the Court of Cassation or by one of the lawyers while the Disciplinary Council has the right to order the judge to appear. Yet, and if not showing or having delegated someone, then he/she shall be subject to trial in absence."

As for the French legislation, the session of the disciplinary council is public. However, if the protection of public order or privacy so requires, or if there are special circumstances likely to prejudice the interests of justice, access to the courtroom may be denied to the public during each or part of a hearing by the decision of the Disciplinary Board..." (Art. 57, Ordinance on the organic law relating to the status of the judiciary, 2019).

Accordingly, it is noted that the investigation sessions with the judge regarding the disciplinary violations committed by him/her related to the misuse of social media in Jordan and France are conducted in secret and the investigation proceedings may not be published which reason is due to the preservation of the impartiality and independence of the judiciary.

VI. Disciplinary Penalties for Judges' Misuse of Social Media

Disciplinary penalties mean that they are procedures established by the legislator and imposed by the competent disciplinary authority on the employee who committed the disciplinary offense in accordance with specific legal controls while such penalties aim at protecting the public interests of the state and to guarantee the running of the state's public institutions regularly and smoothly" (Al-Qaisi, 2017, p. 285).

Hence, the Jordanian legislator regulated the disciplinary penalties resulting from judges' misuse of social networking sites. So, Art. 37 of the Jordanian Judicial Independence Law provides, "The Disciplinary Council may impose the following disciplinary penalties: A – Forewarning. B – Warning. C – Degrading the degree. D – Dismissal from service. E – Removal."

Further, the Jordanian Supreme Administrative Court, in its ruling No. 117/2019 issued on 1 May 2019, stated, "We find that the legislator has granted the disciplinary council the right to impose any of the penalties mentioned in Art. 37 of the Judicial Independence Law, but it provided that a decision be issued from the Judicial Council permitting the imposition of the penalty of degrading of the judge explicitly according to the provision of Art. 25/B of the same law, as it stipulated additional conditions than what was mentioned when making the decision regarding the two penalties mentioned in Para D and E of the aforementioned Art. 37. Yet, the administrative decision that is subject to appeal for cancellation is the decision issued by an administrative body in which it discloses its binding will with its authority under the laws and regulations and it would create a legal position after it had exhausted all the stages of the administrative hierarchy for its issuance and then such an effect occurs only after ratification by a higher authority by which it is not considered a final executive administrative decision which feature distinguishes the final administrative decision from the preparatory legal management work that precedes the final stage of administrative decision-making."¹⁰

On the other hand, the French legislator regulated the disciplinary penalties resulting from judges' misuse of social networking sites and the media for which Art. 41-15 and 45 of the Decree No. 58-1270 of 22 December 1958 on the Basic Law related to the Status of the Judiciary provides, "Judges appointed under this subsection shall be disciplined by a disciplinary authority to be determined under the terms of Chapter VII and that the authority may, notwithstanding the penalty provided for in the first paragraph of Art. 45, order any other

¹⁰ Supreme Administrative, *Suzan Kamal v. Disciplinary Board formed by the Judicial Council*, 1 May 2019, D 2019, 117 (The Jordanian Supreme Administrative).

disciplinary sanction including termination of the judge's services. Yet, the disciplinary penalties applied to judges are: 1 – A blame with keeping in file; 2 – Exclusion from the job; 3 – Withdrawal of certain positions; 4 – Suspension of his/her appointment for a maximum period of five years; 5 – Demotion; 6 – Temporary exclusion from all positions for a maximum period of one year, with total or partial deprivation of retirement; 7 – Demotion; 8 – Compulsory retirement or termination of his/her services when a judge is not entitled to a pension; 9 – Removal.”

In fact, it is noted from the foregoing that the Jordanian and French legislators have taken into account the gradation of punishment according to the gravity of the disciplinary violation committed by the judges. In fact, the disciplinary offense committed by judges related to the use of social media may be of a degree of gravity and may affect the independence and impartiality of the entire judiciary which calls for the termination of the judge's services.

VI.1. The Authority Competent to Impose a Disciplinary Penalty on Judges' Misuse of Social Media

The authority concerned with imposing disciplinary punishment on judges' misuse of social media means, “The authority appointed by the legislature to impose legally prescribed penalties on employees who are proven to be responsible for disciplinary crimes” (Al-Ajarmah, 2007, p. 37; Al-Qaisi, 2017, p. 283).

So that the disciplinary council is composed of at least three judges of the Court of Cassation appointed by the council from other than its members for a period of two years while the council may form more than one disciplinary council. The disciplinary board issues its decisions unanimously or by majority within a period not exceeding four months (Art. 30, The Judicial Independence Law, 2014).

In application of this, the Jordanian Supreme Administrative Court ruled in its judgment No. 1/2020 dated 29 January 2020, “We find the authority of the Judicial Council to lower the degree of the judge is a discretionary authority in the event that the judge performs acts that affect the prestige of the judicial authority and the high position

of the judiciary because the judge's work is not measured by other public servants, as his/her behavior must be more strict and firm, so that he/she is well-behaved, characterized by integrity, committed to what is stated in the Law on the Independence of the Judiciary and the Code of Judicial Conduct rules approved by the Judicial Council distancing the judicial work from being surrounded by suspicions under penalty of disciplinary responsibility. Yet, and since it is established in jurisprudence and the judiciary that every administrative decision has a valid reason based on it, and the claimant to the contrary must provide evidence that the decision is not based on a reason or that its reason is contrary to the law, we find that the Judicial Inspection Department, and after investigating with the challenger, it concluded that his acts constitute a violation of the provisions of Art. 4 of the rules of the Code of Judicial Conduct and that the Disciplinary Council arrived at the same conclusion and decided to impose a penalty to degrade the appellant with its authority.”¹¹

In France, the Disciplinary Council is composed of the judges of the Supreme Court, in accordance with the provisions of Art. 65 of the Constitution and Art. 14 of Basic Law No. 94-100 of 5 February 1994 regarding the Supreme Council of the Judiciary and when a decision is taken regarding the existence of a disciplinary offense, the competent body in the Supreme Council issues a restricted vote, on the basis of the absence of a penalty. Yet, and in the event of equal votes, the violation is re-investigated, and when the vote is in the presence of a disciplinary offense, then the opinion issued on the penalty is taken by a majority of votes, and in the event of a difference of votes on choosing the penalty, the vote of the president is casting (Art. 49, Ordinance on the organic law relating to the status of the judiciary, 2019).

It is noted from the foregoing that the disciplinary penalty for misuse of social media by judges in Jordan and France is carried out by the authority appointed by the legislator to impose legally prescribed penalties on judges who are proven responsible for disciplinary crimes, so that the disciplinary council constitutes a guarantee of disciplinary trials.

¹¹ Supreme Administrative, Sami Irsheed v. Jordanian Judicial Council, 29 January 2020, D 2020, 1 (The Jordanian Supreme Administrative).

VI.2. Appealing the Disciplinary Decision Issued regarding Judges' Misuse of Social Media

The disciplinary decision issued by the Disciplinary Council regarding judges' misuse of social media is subject to the control of the administrative judiciary as the judge has the right to appeal the disciplinary decision issued against him/her (Krawitz, 2014, p. 206), as Art. 35 of the aforementioned Jordanian Judicial Independence Law provides, "The judgment issued in the disciplinary case shall include the reasons on which it is based, and its reasons are recited when pronounced while the judgment is subject to appeal before the competent administrative court."

So that the Administrative Court, exclusively, is competent to consider all appeals related to final administrative decisions, including: appeals against any final decisions issued by administrative bodies with judicial jurisdiction, except for decisions issued by conciliation and arbitration bodies in labor disputes and the appeals that are within the jurisdiction of the Administrative Court under any other law" (Art. 5, The Judicial Independence Law, 2014).

Further, Art. 25 of the same aforementioned law provides, "The Supreme Administrative Court has jurisdiction to consider appeals submitted to it in all final judgments issued by the Administrative Court and that it considers appeals from both substantive and legal aspects."

In fact, appealing the Disciplinary Council's decision regarding judges' misuse of social media before the Administrative Court constitutes an essential guarantee for the judge, considering that the Administrative Court is an independent judicial body that considers the legality of the procedures and the legality of the penalty as well as its suitability to the behavioral violation committed by the judge and that the Administrative Court considers the reasons for the appeal that affect the disciplinary decision. And stipulated in Art. 7 of the mentioned Jordanian Administrative Judiciary Law (such as lack of jurisdiction, violation of the constitution, laws or regulations or error in their application or interpretation, and the association of the decision or procedures for its issuance with a defect in form, abuse of authority, and defect of reason). Actually, the guarantees of the judge who is

subject to a disciplinary penalty are enhanced by that the decision of the Administrative Court is subject to appeal before the Supreme Administrative Court and that the Court considers the appeal from the objective and legal aspects (Mufleh and Al-Thneibat, 2017, p. 236).

Hence, the Jordanian Supreme Administrative Court ruled, in its judgment No. 1/2020 issued on 29 January 2020, “We find the authority of the Judicial Council to lower the rank of the judge is a discretionary authority in the event that the judge performs actions that affect the prestige of the judicial authority and its high ranking because the judge’s work is not measured by other public servants, as his/her behavior must be more strict and firm, so that a well-behaved person of good conduct is characterized by integrity, committed to what is stated in the Law on the Independence of the Judiciary and the Code of Judicial Conduct rules approved by the Judicial Council, distancing the judicial work from being under suspicion under penalty of responsibility. Yet, and since it is established in jurisprudence and judiciary that every administrative decision has a valid reason based on it, and the claimant to the contrary must provide evidence that the decision is not based on a reason or that its reason is in violation of the law. Yet, and in this case, we find that the Judicial Inspection Department, and after investigating with the challenger, did find that the act of the challenger to the effect of issuing a decision to return the weapon that had previously been decided in the penal judgment to be confiscated as a result of influence on him by other persons, constitutes a violation of the provisions of Art. 4 of the rules of the Code of Judicial Conduct. Further, the disciplinary board arrived at the same result and decided to impose the penalty of lowering the degree of the challenger with its authority under Art. 32 and 37 of the Judicial Independence Law No. 29 of 2014 and that the Judicial Council issued its challenged decision based on established facts that constitute a violation of the rules of the Code of Judicial Conduct which the Law on the Independence of the Judiciary obliged judges to abide by.”¹²

In France, the authority competent to review the appeal against the decision to impose the disciplinary penalty resulting from the misuse of

¹² Supreme Administrative, Sami Irsheed v. Jordanian Judicial Council, 29 January 2020, D 2020, 1 (The Jordanian Supreme Administrative).

their personal accounts on social networking sites by ordinary judges is to resort to the administrative judiciary. The decision issued shall be notified to the competent judge in an administrative form. It is effective from the day of notification. He may appeal the decision of the Disciplinary Council (Art. 58, Ordinance on the organic law relating to the status of the judiciary, 2019).

Therefore, it becomes clear that the appeal against the decision of the Disciplinary Council regarding judges' misuse of social media in Jordan and France is before the administrative judiciary which constitutes an essential guarantee for the judge, given that the administrative court is an independent judicial body that considers the legality of the procedures and the legality of the penalty as well as its suitability to the behavioral violation committed by the judge.

VII. Conclusion

Judges in Jordan and France must take care that their expression of personal opinions or beliefs does not adversely affect their official duties, and that they do not raise doubts about their impartiality and duties that require them to demonstrate loyalty and responsibility towards their position and to always respect and honor the judicial position when expressing their views and opinions on the Internet and the need to strive to preserve and enhance trust in the judicial system and to avoid any electronic activity that undermines public confidence in the judiciary or raises doubts about its independence and impartiality.

Further, social media occupy an important place all over the world, including the judges and represents a great means of awareness and public education for which the same can contribute to enhancing public confidence in the judiciary, as the use of social media can generate new challenges and ethical concerns about the extent of validity of the content of the published material, unintentional manifestation of bias or inclination and unintended consequences arising from the judge's interaction with other parties.

Yet, judges are sometimes subject to disciplinary sanctions, including suspension and removal from office for exercising their right

to freedom of expression, either alone or with others in a courtroom or on a social media platform, and in the vast majority of cases disciplinary measures are applied based on an alleged breach by judges of the duties binding on them, especially the exercise of restraint in exercising their fundamental freedoms in order to preserve the prestige of their position and the impartiality as well as independence of the judiciary.

Hence, we recommend that Jordanian legislation related to the organization and functioning of the judiciary should include specific provisions that establish the permissibility of judges to exercise the right to freedom of expression, belief, assembly and association, as is the case in French legislation and the exercise of political rights on an equal basis with others and that restrictions on these freedoms are to preserve the judicial authority's image and the preservation of the independence and impartiality of judges and that professional associations of judges in Jordan put specific provisions in codes of conduct and set specific guidelines on the exercise of basic freedoms by judges while these provisions should serve as standards for self-regulation that help judges to make their own decisions on how to exercise human rights and fundamental freedoms in a manner consistent with the prestige of their position and the independence as well as impartiality of the judiciary and that these principles be separate from the disciplinary rules applicable to judges.

In fact, judges in Jordan and France should be involved when developing legislation and ethical standards related to the exercise of fundamental freedoms and political rights within an open and transparent process, taking into account existing international standards relating to the exercise of fundamental freedoms and the jurisprudence of courts as well as regional human rights mechanisms and subjecting judges to adequate training on ethical principles for the exercise of freedoms essential, both in relation to their profession and activities outside the profession while such training in particular shall include practical guidance on the use of social media and the media.

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