

RATING THE LEGAL SYSTEM: A STEP CLOSER TO THE FUTURE?

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Abstract

Today we have almost everything at the tip of our fingers, or to be more precise, just one click away. Whether calling a cab, ordering food, making a reservation or booking a flight, you just have to log onto an online platform, and you are settled. The great thing is that, after the service is provided, you can - and are encouraged - to leave a comment speaking your mind, praising or complaining, with valid arguments.

Imagine a "platform" where you can not only leave a review of a restaurant, but a "platform" where you can even "rate" the quality of the judicial proceedings by some given criteria's involving the court (waiting room, courtroom's space, public timetable), the court's clerks (manners, efficiency) or, why not, the judges (law knowledge, duration of the process, commitment and celerity).

Would this be an infringement to the judge's independency, or would it bring a benefit to the judicial system by making the judges more aware of how their court decisions affect the people involved in their rulings?

This study is intended to create awareness on the modern changes that can be seen as challenges associated with the benefits or downsides of using the online platforms in the judicial system. The objective is to provide some practical and deontological recommendation which the Superior Council of Magistracy and the National Association of Bars might consider to include (if relevant to the circumstances of their respective jurisdiction) in guidance to their members.

Besides highlighting some deontological considerations, this study also explains the challenges that are of a more technical nature, including those related to maintaining the independency of the judge, the security of personal information and those related to specific ways that a "rate" given can be categorised as being accurate or being given in bad faith.

Keywords: *judge's independency, celerity, rating the judicial system, practical recommendation, personal information.*

1. Introduction

This paper tries to raise awareness about the modern changes that can be seen as challenges when it comes to innovate the judicial system by introducing and using an online rating platform that brings the parties the opportunity to give practical recommendations or to give some sort of a feedback.

It is intended to foresee the tendency of the artificial intelligence to gain access (also) into the legal system and tries to seek an approach that, in the "hands" of a well-intended authority, could bring mostly benefits to the judicial system.

The idea of an evaluation of a particular "service", even though it is not new on the market, being used by providers of such services (e.g. restaurants, hotels, home rental agencies), has brought numerous advantages both ways, for clients and also for providers, being a tool for improvement in that specific field.

So, the question is, why not such a platform in the legal system where the party interested could rate the quality of the judicial proceedings regarding the court, the clerks or even the judges?

Maybe the reluctance that stopped such a platform from being created was in regard to the sensitive matter of how this will affect the judges'

independency or how it will deal with the security of personal data. For judges to be impartial and their ruling to be solely their intimate conviction, there must be confidence that no external influence of any sort is exerted. In essence, without this guarantee, there is a danger that the party would lack the trust in the legal system.

Because of this our legal system has provisions in order to ensure the protection of the right and duty of the judge to be independent and impartial.

Such an online rating platform must not be seen as a way of infringement of those rights, but as a tool to improve some aspects of the judicial proceedings. Having objective categories and criteria of evaluation, knowing which questions to raise, for whom they are intended and how to "translate" the user's recommendations into real actions, this online rating platform could really make a difference in the "life in front of the court".

This paper is intended to answer two important questions: (i) which criteria would make an online rating platform practical and possible and (ii) what rules of deontological conduct might be affected by the use of an online rating platform.

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2. The purpose and working method of an online rating platform

The sole purpose of a platform where the people actually involved in the judicial proceedings can leave a “review” of their experience should be to improve the quality of a “service” from which many will benefit.

But for this online rating platform to have actual results there should be strict and objective categories and criteria on who can have access or what can be rated. Likewise, there must be a control over who can monitor the rating process.

The first problem that must be addressed refers to the authorities who should have control over the platform. And because it involves judges, lawyers, court clerks and the court – meaning the building itself, the existing conditions for the ruling process, the most prominent authorities are the Superior Council of Magistracy (hereinafter referred to as SCM) and the National Association of Bars hereinafter referred to as NAB).

The SCM has both the right and the obligation to defend the judges against any act of interference in or related to their professional activity which could affect the independence or impartiality of the judges, in accordance with Law no. 304/2004 on judicial organisation, republished, as subsequently amended and supplemented (hereinafter referred to as Law no. 304/2004), as well as against any act that could create suspicion on them.

Also, the SCM ensures the compliance with the law and the criteria of professional competence and ethics in the professional career of judges, power which is exercised in compliance with the provisions of Law no. 303/2004 on the status of judges and prosecutors, republished, with subsequent amendments and completions (hereinafter referred to as Law no. 303/2004).

Moreover, SCM has a significant role in the judges’ carrier and also in the organisation and functioning of courts.

Therefore, it is right to say that, regarding the well-being and well-functioning of the judicial proceedings, the SCM is the authority who has the biggest interest on supervising the online rating platform.

The other authority that might have interest and can benefit by being involved in the online rating system is the NAB.

The NAB has an important role to play in defending the prestige of the lawyer profession, by establishing deontological rules and ensuring that they are respected. The provisions of Art. 10 (1) of Law no. 51/1995 for the organisation and practice of the lawyer’s profession (hereinafter referred to as Law no. 51/1995) state that *the Bars and the National Association of Bars ensure the qualified exercise of the right of defence, competence and professional discipline, protection of the dignity and honour of lawyers.*

Therefore, who better to oversee that the lawyers have the best conditions to exercise their role than the NAB?

If these two authorities would work together and align to modern changes by creating and monitoring an online rating platform, it could bring great benefits to the judicial system.

The second and third aspect that should be considered and that refers to the categories and criteria for rating intertwine and can be viewed as a whole. There are three important specific areas of evaluation that can be accessed on the platform:

2.1. Rating the court itself

The first sign of a civilised and respectful judicial system is shown in the way the court and its surroundings are organised. Hence, a potential user should have the possibility to leave a review of a specific court regarding one or more of the following:

- I. location. How far is the court located according to the city’s points of interest? Is it easy to reach using public transportation?
- II. parking space. Does the court have a parking lot for the people coming to the court: judges, clerks, auxiliary personal, lawyers, legal advisers, people involved in a trial? If it has, are there special parking lots for disabled persons?; are there enough parking lots in relation to the court’s numbers of cases?
- III. a special design area for photocopying. If the court has one, is it well supplied? Are you given the possibility to pay either by cash or by credit card? Do you have access to a fax machine or a computer for printing online documents?
- IV. a postal office. Is there any postal office inside the court or nearby? Can you pay by cash and also by credit card?
- V. a cloakroom. Is there a special place for storing clothes, luggage and umbrella?
- VI. a vending machine. Is there any possibility to purchase water, juice, coffee, tea or something to eat on the premises?
- VII. waiting benches near every courtroom and an electronic system for the pending files that are being judged in that courtroom. Do the parties involved in a trial have the possibility to rest outside, but near the courtroom, until it is their turn, if the courtroom is full? And if so, do they have the possibility to find out which case file is being judged in real time without entering the courtroom?
- VIII. a waiting room for lawyers. Is there a special room for lawyers to wait for the hearing to start? Does it have enough space for storing files, robes, legislation books? Is the room provided with an electronic system that announces the pending files and the courtrooms where they are judged? Do lawyers have the possibility to rent a robe?

- IX. (viii) the courtroom's space. Is there enough space/ benches for the public? Is there a special place for lawyers/ legal advisers/ the parties to study the case file folder?
- X. (ix) the registry. the archives. Are they spacious enough for the clerks or the auxiliary personal to work? Is there a specially arranged place for the public to study documents in a case file and make notes? Are there any forms put at the public's disposal (e.g. request for studying and copying a case file, request for obtaining a certificate that a certain case file exists before that court, request for legalisation of document, and so on)? Is there place for a waiting line? Or even a waiting electronic system, both for lawyers/ legal advisers and for the parties or their legal representatives? Is the public timetable reasonable?
- XI. (x) other facilities, like: is the court, courtrooms, waiting room or the registry/ archives equipped with air conditioner? Can you find a public toilet on the premises? Is there a police office nearby or even inside the court? Can you find an office that has a legal assistance service?
- XII. (xi) on online platform of the court. Does it have:
- the address;
 - the public timetable;
 - an online registry where you can upload a file to be attached to your court file, based on a unique user name and passwords;
 - an online archive where, using the same unique user details, you can consult your case file;
 - a tracking list of the court's hearings;
 - an automatic update of any change that was made to your case file?

There should be also a section for recommendations and improvements.

Taking part of a judicial proceeding is stressful as it is, no matter what side you are. It is time and money consuming and can easily get you off your nerves. There is no reason for not trying to ease the process. And the first step should be to identify the court's infrastructure problems and try to address them so the "legal experience" is as smooth as possible.

2.2. Rating the court's clerks

This could appear as a tricky situation, because it involves working and relating to people's needs and problems. And the human factor is very subjective and never constant. It can be affected by emotions, by the person's present state of the mind or the issues that may appear.

Our honest opinion is that, if there were better working conditions and an online interface as suggested above, the flow of actual people entering the court's registry and archives would be smaller and so the court's clerks would have a better management of the problems that are for them to solve.

Also, there should be a distinction between the clerks that work in the registry/ archives and the ones standing beside the judge in the courtroom.

After taking all this into consideration, the areas of evaluation of a court's clerk could be:

- I. punctuality. Is there a public timetable? Does the clerk respond to the public's needs in that timeline? Is the clerk available in person in the registry/ archive or reachable by phone/ email during the public hours?
- II. efficiency. Is the clerk well trained? Could he/ she help you regarding the issue that brought you to the registry/ archive?
- III. respecting the law. First of all, does the clerk know the law provisions applicable to his/ hers profession? Is the clerk acting in the limits dictated by his/ hers attributions?
- IV. manners. Does the clerk have the same respect no matter who enters the registry/ archive? Does the clerk show patience, a well-mannered attitude and is he/ she inclined to help with your problems rather than postpone you?
- V. waiting time. Is there a reasonable waiting time in relation to your problem and the difficulty arising from it?

Rating the court's clerks on these criteria could give a sense of what are the existing problems: is there not enough personal for that specific court? Can the rating be improved by investing into the personal? Is there a need for training, teambuilding or having more people?

2.3. Rating the judges

Maybe one of the most sensitive parts of an online rating system would be evaluating, in an objective manner, a judge's conduct and behaviour in court. It can be difficult to "rate" the judge's appearing in front of the public and not his/hers decisions, so this is why it is important to find really clear objective criteria to do so. Because, in the end, the judge is the one who has the most powerful impact in the legal proceedings and the way he/ she behaves affects every party involved in a case file.

So, the judge should be a real professional and therefore, he/ she must be "rated" accordingly. There can be specific categories and criteria for evaluation, such as:

- I. punctuality. If there is a starting hour of the hearing, does the judge arrive on time?
- II. interest in knowing the case file. How well-prepared is the judge? Do he/ she know the documents, the previous rulings, the exceptions or the problems that arise in a specific file?
- III. duration of the litigation. When did the trial start and when did it end? How long did it take? Were there any difficulties involving the parties, the documents or it emerged a need to involve other people into the case file, like certain specialists and that is the reason for the delaying of the process?
- IV. duration of the writing of the decision after ruling. How long after the judge decided on a case it took him/ she to actually write the decision so the interested party could benefit from it?

- V. law knowledge. Is the judge well-prepared, do he/she know the rules and principles not only in regard to a specific case file, but also in relation to the procedure of conducting a court meeting? Does the judge make obvious mistakes repetitively or is he/ she having minor setbacks?
- VI. patience. respect. commitment. It may seem that these are three big words, but the problem is quite simple: is the judge *patient* with the people who do not have legal knowledges and therefore may seem confused of how the proceedings take place? Does the judge offer the same *respect* and *commitment* towards the lawyers/ legal advisers as it is requested from the latter regarding: wearing the robe, prioritising the case files where the parties have a legal representative? Does the judge have a neutral attitude and voice tone towards the parties or is he/ she being sarcastic or acts in a manner that can be seen as offensive?

3. Rules of deontological conduct which might be affected by the use of an online rating platform

For such a platform to exist and fulfil its purpose, it is important to identify the areas in which the SCM and/ or the NAB might need to interfere.

First of all, the judges and the court's clerks are no business people, so the online rating platform should not be a commercial one. Taking this into consideration, a level of control must exist and the SCM and the NAB may consider laying down some rules to ensure that the principles protecting the judicial system, in general, and the judges, in particular, are not compromised or threatened.

Second, the judicial system already has its rules intended to protect the people involved in a case ruling, such as: the claimants/ defendants, their lawyers, the prosecutors, if the case, the judges and the clerks. It is vital to adapt these rules to ensure the same level of protection in the online rating platform as it is in the traditional context. There is no objective reason why there should be other or new regulations that would make the judicial system more difficult to access in the digital environment.

In this context, the third and final area of concern for the SCM and the NAB is the legislation subject to be applicable regarding an online rating platform of the judicial proceedings. As it involves both persons outside and also inside the legal profession, this platform falls within the legislation applicable for the legal profession, such as: (i) the Romanian Constitution, (ii) Law no. 304/2004, (iii) Law no. 303/2004, (iv) Law no. 51/1995, (v) the Status of the profession of lawyers from 03.12.2011 (National Association of Bars), (vi) the Rules of internal order of the courts from 17.12.2015 (the SCM).

The use of an online rating platform may affect several professional rules of conduct. The most

important challenge that can arise includes *issues relating to a judge's independency*.

The real question is whether rating a judge's actions in court may be seen as an interference in the ruling or even an infringement to the judge's independency.

According to Art. 124 (3) of the Romanian Constitution, judges are independent and are subject only to the law. This independency must be regarded in relation with the other two state powers: the Legislative and the Executive power. This does not exclude the intervention of the judicial control courts. Also, the judge's independency is not affected by the control of the SCM which is the body that has the authority to promote, transfer or sanction the judges, in accordance to the law.

Art. 2 (3) of Law no. 303/2004 also states that the judges are independent and are subject only to the law and must be impartial.

But what does this independency and impartiality refer to? It is really all about the requirement that the judge, in his ruling, has to settle disputes without any interference from any state authority or from any persons – legal or natural – in fact.

The independence also refers to the impartiality of the judge towards the parties of the case. Therefore, the judge's attitude must be neutral with regard to the position and interest of the litigants.

In accordance with this principle, no one can make suggestions or impose on the judge how to rule in a particular case. Both the appreciation of the state of fact and the choice of law enforcement in each particular case are and must remain the expression of the judge's intimate conviction, which must be formed without any influence or external interference.

Do we find ourselves in the situation of an external interference if, *after* a ruling is made, the parties involved in the case (the parties, their lawyers or their legal representatives) rate how the proceedings were held?

First of all, we must keep in mind that the rating is given *after* the judge has ruled in a particular case. Furthermore, the rating should be given *even after* the decision is written by the judge and communicated to the parties involved. Therefore, in the process of deliberation and decision, the judge is not affected or influenced by any opinion or rating.

Second, the online rating platform, as we see it, has some objective criteria based on which you can state your opinion on the quality of the judicial proceedings. It is definitely *not* a way to control the decision taken by the judge in a particular case, for that there are remedies given by the law, such as an appeal.

And finally, the results of the online rating platform could be made public to the judges only as part of their three-year evaluation, as regulated in the Decision of the SCM Plenary no. 1179 from 3 November 2015. The results on the online rating platform can be incorporated in the evaluation, based on the Evaluation Guideline of the Magistrates activity,

whose purpose is, at it states in Chapter I: *to establish the level of professional competence, to improve professional performances, to raise the efficiency of the courts' activities and to raise and maintain the public's trust in the legal system and to strengthen the quality of the system.*

4. Challenges associated with using an online rating platform

Besides the deontological considerations presented above, there are also other challenges related to the use of the online rating platform that are more technical but also need to be addressed.

There are two main areas of interest regarding the online rating platform concerning the IT security and the risk of profiling of data subject and reusing of data by the online provider.

When one of the persons interested in using the online rating platform starts generating data on the platform, he or she must be protected from the many dangers lurking on the internet, such as: viruses or malicious codes, identity theft or cyberfraud (e.g. phishing).

In terms of IT security, the platform providers should be selected based on the details provided, like actual information on what kind of IT security it will be attained, having certifications to support their claim.

What appears like an easy to use and attractive platform can have hidden risks, like the ability of the platform provider to analyse and reuse the information. What it would be comforting is if the platform provider would have specific terms and conditions that would clearly exclude profiling and even reusing after anonymisation.

5. Conclusion

To sum up the main outcomes of the paper, we can conclude that there are changes in the online sector that will reach and impact also the legal system. But we should not see this as a downside, but more as a challenge to improve some areas that are up for modification. If there is a real interest from the authorities that are involved directly into the legal proceedings, an online rating platform could result in a real helpful tool to upgrade and modernise the courts as we know them.

Although we must keep in mind that only by having objective categories and criteria, the independency of judges is not infringed, this online platform can be a really good evaluation for the judges.

We consider this paper only the beginning point for a further more complex study which should involve also opinions from IT specialists on how such an online platform can be effectively implemented.

References

- Constituția României;
- Legea nr. 303/2004 privind statutul judecătorilor și procurorilor;
- Legea nr. 304/2004 privind organizarea judiciară;
- Legea nr. 51/1995 pentru organizarea și exercitarea profesiei de avocat;
- Statutul profesiei de avocat din 03.12.2011 (Uniunea Națională a Barourilor din România);
- Regulamentul de ordine interioară al instanțelor judecătorești din 17.12.2015 (Consiliul Superior al Magistraturii)
- https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_Guide_s_recommendations/EN_DEON_20180629_CCBE-Guide-on-lawyers-use-of-online-legal-platforms.pdf
- https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/DEONTOLOGY/DEON_Postion_Papers/EN_DEON_20170915_Statement-on-professional-secrecy_LPP.pdf
- <https://www.csm1909.ro/263/Competențele-CSM>
- <http://www.unbr.ro/av-dr-gheorghe-florea-presedintele-unbr-avertizeaza-asupra-fenomenului-falsilor-avocati-incet-incet-lumea-se-obisnuieste-ca-avocatura-poate-fi-practicata-de-oricine-inclusiv-de-firme/?highlight=florea>
- https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf
- <https://www.forbes.com/sites/bernardmarr/2018/05/23/how-ai-and-machine-learning-are-transforming-law-firms-and-the-legal-sector/#79bf384832c3>
- <https://www.information-age.com/artificial-intelligence-lawyer-123477238/>
- <https://www.information-age.com/ai-in-the-legal-industry-2-123474118/>
- https://medium.com/@oleksii_kh/ai-is-entering-judicial-system-do-we-want-it-there-632f56347c51
- http://old.csm1909.ro/csm/linkuri/29_01_2016__78612_ro.doc