

## Conclusions of the summary report on the application of the legal provisions governing social security benefits granted to persons with reduced work capacity

On 1 January 2008 the legal regulation on social security benefits and social allowances granted to disabled persons and to persons with reduced work capacity significantly changed. Under the former regulation the level of work capacity impairment was, among others, an eligibility criterion for claimants/recipients of such benefits. Under the regulation in force from 1 January 2008, eligibility to such benefits was linked to the level of health impairment. The legislator introduced new eligibility criteria in respect of the various benefits and set up a so-called complex health assessment scheme under which claimants' suitability for work and rehabilitation was also examined. Such complex health assessments were carried out in the framework of expert proceedings, specified in a separate law, by expert committees involving medical, occupational and social care experts. Specialized authority positions were based on the expert opinions of these committees.

As to the practice:

The courts had to examine whether the objections raised in the statements of claims were suitable to identify a violation of law. The courts (correctly) did not reject a statement of claims contesting the merits of the findings contained in the social security authority's decision on the plaintiff's health impairment level or suitability for rehabilitation merely on account of a failure by the plaintiff to identify the alleged violation of law, since under the rule in Section 3(2) of the Code of Civil Procedure, namely that submissions to the courts are to be determined according to their contents, the alleged violation of law could be identified.

Information on the burden of proof must be provided to the parties by paying due regard to the special features of the case at issue; the provided information content may vary in the various evidence-taking phases but, in general, it can be stated that in such cases the provided information should consist of the following items: the disputed issue is a professional one which can only be determined by involving experts; on which party is the burden of proof imposed; the court may not order *ex officio* evidence-taking if the person bearing the onus of proving fails to request for the appointment of an expert, and such failure will be adjudged against the plaintiff and may result in his losing the case; the issues which need to be clarified in the proceedings by obtaining an expert opinion; the parties may request that certain questions be addressed to the expert but decision on the questions actually addressed to the expert will be made by the court; the parties may submit observations on the expert opinion and in case they contest the statements of the opinion they must give reasons; the court may order further evidence-taking if it finds such evidence-taking necessary in respect of a given fact in order to clarify that fact; the court may not communicate concrete information (e.g. it does not find a relevant fact or circumstance properly proved); the parties may propose the taking of further expert evidence.

In order to ensure good-faith and appropriate litigation by the parties and the completion of the proceedings within a reasonable length of time, it is expedient to obtain the parties' statements in the various phases of the proceedings as to whether they contest a statement of fact made by the adverse party, and in case they do, to ask for their reasons. In inviting the participants of the proceedings to file statements, observations or motions the court has to

always fix a time limit. Under Section 164(1) of the Code of Civil Procedure, the unlawfulness of a decision rejecting a claim for a benefit at issue has to be proved by the plaintiff. Under Section 336/A(2) of the Code of Civil Procedure, the respondent has to prove that the facts underlying its decision are true. The administrative organ's failure to comply with its obligation concerning the establishment of the facts shall not result in a reversal of the burden of proof. The plaintiff must properly substantiate his allegations made on this point.

The issues as to whether the assessment of the plaintiff's illnesses requires the involvement of other experts or expert consultants and as to precisely in what field is medical expertise needed should be determined by the appointed forensic medical expert, therefore the field of medicine need not be specified in the court's invitation to that effect. In the proceedings the court appoints an expert from the List of Registered Experts; the expert's entitlement to give an opinion cannot be contested on the ground that the piece of legislation based on which the expert had been registered was meanwhile repealed. In social security lawsuits an expert opinion is an opinion issued by an expert appointed by the court under Sections 177-183 of the Code of Civil Procedure. This, however, does not mean that courts do not need to clarify the reasons for the different views contained, on the one hand, in the expert opinions/specialized authority positions mandatorily obtained by the social security authorities and, on the other hand, in the opinion of the expert appointed in the court proceedings. An expert opinion is not an exclusive proof; if its well-foundedness is contested, the court must examine the issue. As to whether further evidence-taking is required can only be determined in light of the further data and information available in the proceedings. This also holds true for private expert opinions filed by parties and raising concerns in the court about the well-foundedness of the obtained expert opinion. The positions of the specialized authority obtained in the social security organs' proceedings are based on opinions issued by the National Rehabilitation and Social Care Expert Institute committees, which consist of medical, occupational and social care experts. These experts issue opinions on questions requiring special expertise (expert issues).

Section 182(3) of the Code of Civil Procedure specifies the procedural acts that are suitable to resolve concerns about an appointed expert's opinion. The court has to eliminate the deficiencies and the contradictions in the expert opinion primarily by obtaining further statements from the expert having given the opinion. If this procedural act has produced no result or foreseeably will produce no result, upon a party's request another expert may be appointed. An expert body can only be appointed if the issue having arisen in the proceedings cannot be clarified under Section 182 of the Code of Civil Procedure, by obtaining two independent expert opinions and by hearing in person the appointed experts [Section 183(2) of the Code of Civil Procedure]. The expert body cannot be obliged to give a review expert opinion on the formerly obtained expert opinions: its opinion shall constitute an expert opinion. By paying regard to the nature of the deficiencies and contradictions, the court is free to choose a means deemed to be suitable to eliminate the concerns arising in connection with the expert opinion. This freedom of choice, however, does not mean that the court may decide on an expert issue by deliberation, by ignoring the laws.

Contradictions on medical expert issues in forensic expert opinions obtained in proceedings instituted for the review of a social security decision and the expert opinions/specialized authority positions which were issued by a committee of the National Rehabilitation and Social Care Expert Institute and which served as a basis for the social security decision whose

review is being sought, have to be resolved by the court by taking further expert evidence. Where the assessment of the medical committee and of the forensic expert committee appointed in the case at issue contains significantly different conclusions which affect the adjudication of the case, the court may not refrain from clarifying the reasons underlying the differences and such differences may not be resolved by judicial deliberation.

No evidence can be taken *ex officio*. Where a party on whom the burden of proof is imposed fails to motion the taking of evidence despite having been informed by the court of the necessity of further evidence-taking, the judgment may not be contested by alleging a failure on the part of the court to establish the facts or to conduct the necessary evidence-taking. A deficient expert opinion cannot be suitable to rebut the findings contained in the expert opinions/specialized authority positions obtained in the proceedings of the social security organs; failure to motion further evidence-taking results in losing the case by the party on whom the burden of proof was imposed.