Internal Mechanisms for the Settlement of Medical Disputes in the Field of Social Security

آليات التسوية الداخلية للمنازعات الطبية في مجال الضمان الاجتماعي



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Abstract:

Social security legislation recognizes the right of individuals to challenge decisions issued by social security institutions, particularly when these decisions affect the health or social situation of insured persons and their beneficiaries. Among the disputes that arise in this field, medical disputes occupy a central place. In Algeria, the legislator has adopted the principle of amicable or internal settlement to resolve such disputes efficiently and at lower cost. Accordingly, specific procedures and specialized bodies have been established to examine objections and appeals against decisions of social security institutions. The settlement process generally requires prior recourse to mandatory medical expertise or to the competent Wilaya Disability Committee before initiating judicial proceedings. This mechanism aims to ensure faster dispute resolution and to facilitate beneficiaries' access to social security benefits, whether monetary or in kind.

Keywords: Internal Settlement; Social Security; Medical Disputes; Medical Expertise; Competent Wilaya Disability Committee.

الملخص:

من أهم المبادئ الأساسية في تشريع الضمان الاجتماعي الاعتراف للمتعاملين مع هيئاته بحق الطعن في قراراتها التي تصدرها مراعاة لظروفهم الصحية والاجتماعية . وتعد المنازعات الطبية من أبرز النزاعات التي تنشأ بين هذه الهيئات والمستفيدين ، وقد ميزها المشرع الجزائري بإخضاعها للتسوية الودية غير القضائية (الداخلية) لكونها تفضي لحل الخلافات بسرعة وبتكلفة أقل . ولتحقيق ذلك وضع المشّرع قواعد وأجهزة خاصة للتسوية الداخلية، حيث جعل الاحتكام بشأنها إلى الخبرة الطبية التحكيمية الإلزامية قبل أي تسوية قضائية أو عرض النزاع على لجنة العجز الولائية المختصة، تهدف هذه الآلية إلى تسوية جميع الاحتجاجات والاعتراضات على قرارات الهيئات في المنازعات الطبية بما ييسر للمؤمن لهم وذوي حقوقهم استيفاء الأداءات النقدية أو العينية.

الكلمات المفتاحية: التسوية الداخلية، الضمان الاجتماعي، المنازعات الطبية، الخبرة الطبية، لجنة العجز الولائية المؤهلة.

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Introduction:

The social insurance or social security system in various comparative legal systems has evolved into a distinct legal and institutional framework governed by its own laws, regulations, and mechanisms. This framework operates largely independently from the system governing individual and collective labor relations, within which disputes arising between social security institutions and insured persons are resolved.

Pursuant to the provisions of Article 02 of Law No. 08-08 relating to disputes in the field of social security,[1] as amended and supplemented, the Algerian legislator has classified social security disputes into three categories: general, medical, and technical. In this regard, and similar to various comparative legal systems, the Algerian legislator has established an autonomous legal framework specifically governing medical disputes. This framework is regulated through mechanisms and bodies that operate independently from the system for resolving individual and collective labor relations. Such regulation was instituted under Law No. 83-15 concerning social security disputes, which has since been repealed, as well as under the aforementioned Law No. 08-08. Accordingly, the legislator has granted insured persons the right to challenge all medical decisions issued by social security institutions through a physician. This differs from general disputes, which involve disputes of a purely administrative and legal nature related to the application and interpretation of legislative and regulatory provisions governing social security.

Given that medical disputes within the field of social security combine a purely technical dimension, due to their connection with the health status of the social security beneficiary, with specific settlement procedures that distinguish them from other disputes in this field, the legislator was careful to formulate a legal definition of such disputes in Article 17 of Law No. 08-08 as follows: "Medical disputes, within the meaning of this law, refer to disputes relating to the health condition of social security beneficiaries, particularly illness, capacity for work, the patient's health status, diagnosis and treatment, as well as all other medical prescriptions."

Accordingly, in light of the considerable importance of this category of disputes, which has come to occupy a significant position among the various social cases scheduled before judicial authorities, and given the particular difficulties, complexities, and ambiguities that characterize such disputes due to the predominance of their procedural, technical, and medical dimensions, which cannot be fully grasped in both practical and theoretical terms except through direct engagement with the public human resources operating in this field, the central research problem addressed in this

1- Law No. 08-08 of 23 February 2008 concerning disputes in the field of social security, Official Journal of the People’s Democratic Republic of Algeria, No. 11, issued 2 March 2008, p. 8.

study concerns the extent to which Law No. 08-08 relating to disputes in the field of social security, together with its implementing regulatory texts, is effective in the prior settlement of medical disputes, as well as the specific features that characterize this prior settlement of medical disputes.

On the basis of the foregoing, the prior settlement of a medical dispute is subject either to a medical expert assessment, that is, with regard to disputes related to the health condition in general, or to a procedure conducted within the framework of the qualified Wilaya Disability Commission in matters concerning cases of disability, whether relating to its recognition, its degree, or its review. This procedure does not differ significantly from a medical expert assessment, given that the medical expert constitutes an essential element in the composition of the commission and in its deliberations, and must in any event be consulted before any decision is rendered. This study will therefore rely on both the descriptive method to describe and define the various concepts related to the phenomenon and the analytical method to analyze the legal texts related to the subject, by dividing this research into two sections: the first addresses the settlement of medical disputes through medical expert assessment, and the second examines the settlement of medical disputes through the qualified Wilaya Disability Commission.

Resolution of Medical Disputes through Medical Expertise

Disputes relating to the medical status of beneficiaries of social security must be settled within the framework of specific procedures involving medical expertise. These procedures constitute the principal mechanism for resolving medical disputes, whereas judicial expertise represents an exceptional measure that the court resorts to only in particular circumstances.

Recourse to medical expertise is considered equivalent to medical arbitration and constitutes a mandatory preliminary procedure for the internal settlement of medical disputes. This applies in cases of objection to medical decisions issued by the social security authority, which are adopted on the basis of the opinion of the consulting physician. An exception exists in cases of total or partial incapacity resulting from a work accident or an occupational disease, or in cases involving the recognition or reassessment of incapacity within the framework of social insurance. In these latter situations, the objection is submitted directly to the Wilaya Disability Committee without resorting to medical expertise, as provided for in Article 31 of Law No. 08-08.

The purpose of initiating medical expertise procedures is to provide both parties to the dispute with the opportunity to resolve their disagreement through simplified procedures that save time and reduce costs, thereby limiting recourse to the courts. This approach is based on the principle that medical expertise constitutes the primary mechanism for resolving medical disputes, whereas judicial expertise remains an exceptional alternative.

Accordingly, this section examines the scope of medical expertise in the first subsection and its procedures in the second subsection.

The First Requirement: The Scope of Medical Expertise

The subject of medical expertise is extremely broad and is defined according to the types of objections raised against the decisions issued by the medical advisors of the Social Security Authority. Referring to Article 19 of the aforementioned text, the subject matter of medical expertise concerns disputes of a medical nature. These are numerous and may be summarized as follows:

- The ability of the medical institution located near the insured person's place of residence to provide treatment appropriate to his condition instead of the institution he has chosen.
- The refusal, suspension, or cancellation of the disability benefit previously granted to an insured person who is a victim of a workplace accident.
- The cancellation of compensation related to a workplace accident or an occupational disease.
- The refusal of treatment in mineral baths.
- Opposition to a decision revising the pension or the refusal to assume responsibility for compensation.
- The legitimacy of the treatment received by the insured person or his beneficiaries.
- The justification and expenses related to transportation to the hospital.
- The justification and date of work stoppage. If, after examining the insured person or reviewing the file, the medical control services of the fund consider that the prescribed rest period is excessive in relation to the insured person's health condition, or if the medical advisor deems such rest unnecessary, the insured person is informed accordingly and may challenge this decision.
- The pricing of medical procedures performed in light of the tariffs established in the professional fee schedules.
- The extent to which the treatment provided conforms to the prior authorization granted by the Social Security Authority.
- The cause of injuries resulting from a workplace accident or an occupational disease.
- The effect of the return of an insured person who is a victim of a workplace accident to his institution and the performance of light duties on his health condition.
- The determination of the date of recovery or the healing of injuries in cases of workplace accidents. In this situation, the treating physician assesses the condition of the insured person who is a victim of a workplace accident at the end of the work stoppage period resulting from the accident, depending on whether the physical effects of the accident have disappeared or, on the contrary,

whether residual effects remain that have resulted in a disability for the insured person.

- The determination of the treatment to be followed or the medical device that must be worn.

A careful examination of Law No. 08-08 concerning disputes in the field of social security reveals that it is insufficient to clearly define and delimit the scope of medical disputes. This is because such disputes are linked, on the one hand, to the health condition of the insured person and, on the other, to the benefits provided by the Social Security Authority. This is the issue that will be addressed in this section.

First Section: In The Case of Illness

Illness refers to a health condition affecting the insured person that results in additional expenses or a temporary interruption of work, which may be of varying duration. This situation may lead to a reduction or loss of income, or even to expenses that exceed the insured person's usual earnings. Health insurance covers this imbalance in favor of the social security beneficiary.

Health insurance includes benefits in kind consisting of coverage of medical, preventive, and therapeutic care expenses for the insured person or their beneficiaries through various forms of expenditure. Cash benefits, on the other hand, consist of the granting of a daily allowance to a worker who is compelled by illness to temporarily cease work. Referring to Article 16 of Law No. 83-11 relating to social insurance,[1] two forms of interruption of work are identified: temporary interruption or short-term sick leave. The insured person who is prevented by a temporary physical, mental, or even physiological incapacity, including maternity leave, from continuing or resuming work is entitled to daily allowances.[2] The interruption of work is established only through a medical certificate justifying the work stoppage issued by the attending physician in accordance with the legally required formal conditions.[3]

Subsequently, the insured person or their representative must promptly declare the work stoppage. These are formal procedures, the non-compliance with which

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1- The conditions for reimbursement of medical expenses are stipulated in Article 04 of Executive Decree No. 84-27, as amended by Article 01 of Executive Decree No. 88-209 of 18 October 1988, which specifies the modalities for the implementation of Title II of Law No. 83-11 relating to social insurance.

2- Article 14 of Law No. 83-11 relating to Social Insurance.

3- Article 25 of the same Decree No. 84-27: "In the event of work interruption due to illness, the prescription must clearly include the following:

- The name of the insured person, his address, his serial registration number, and the expected duration of work incapacity.
- The name of the physician who ordered the work interruption, his surname, rank, specialty, professional address, and the date of the medical examination he conducted on the insured person.

results in the loss of the right to receive cash benefits in the event that the social security institution is hindered from exercising its supervisory authority through its consulting physician.[1] The decision of the latter determines whether a dispute arises. This applies to short-term illnesses, which the legislator has not exhaustively enumerated, unlike long-term illnesses that the legislator has specifically listed. In contrast to the former, compensation for long-term illnesses is granted for a period of three years calculated from the date of each illness. The justification of the duration of the work interruption, its cause, and the entitlement to compensation remain subject to procedural and technical supervision by the social security institution. Any refusal by the social security institution may give rise to a medical dispute, whereas in the absence of such refusal the insured person may receive daily compensatory benefits until the expiration of the period during which cash benefits for illness are granted. At that stage, the social security institution automatically examines the entitlement under disability insurance without awaiting a request from the concerned person.

Medical disputes may also arise in relation to compensation for temporary total incapacity, where the social security institution is obliged to provide daily benefits for every period of work interruption preceding recovery, consolidation, or death, as well as in cases of relapse. A relapse refers to the aggravation of an injury or the appearance of a new injury resulting from an occupational accident or occupational disease after the injured person had begun to recover, or in the event of a worsening condition.

In all circumstances concerning illness, the legislator requires the declaration of the illness. Failure to comply with the prescribed time limits results in the loss of entitlement to benefits because it prevents the social security institution from exercising its supervisory authority to ensure that compensation is justified. In cases of illness, the declaration must be made within two days, either through direct submission at the counters of the social security institution or by postal transmission.

The Second Section: Occupational Disease

Benefits in kind also cover occupational risks or illnesses arising in the professional environment, commonly referred to as occupational diseases. These must be distinguished from ordinary diseases, even though both involve the need for treatment and the restoration of the injured person’s social balance. They differ in their cause, which in the case of occupational diseases lies in the work performed and the conditions under which it is carried out. They also differ in terms of proof and in the legal consequences established by the law for each, particularly with regard to

1- Article 06 of Ordinance No. 96-17, amending the same Law No. 83-11, which provides: “Failure to comply with the procedures set out in the preceding paragraph shall result in sanctions that may lead to the loss of entitlement to benefits for the period during which it was effectively impossible for the social security body to exercise its control, except in cases of force majeure duly established by the beneficiary.”

procedures and compensation. Nevertheless, it remains difficult to formulate a comprehensive definition of occupational diseases because of the difficulty of establishing the causal relationship between the illness and the nature of the work performed. The legislator has therefore undertaken to define them as "those slowly developing diseases manifested in symptoms of poisoning, infection, or pathological disorders attributable to a specific professional source or occupational qualification." In other words, a causal relationship must exist between the disease and the nature of the work.[1]

The legislator has also established a list of diseases with a potential occupational origin[2] as well as a list of types of work that are likely to cause bodily disorders. These lists are determined through regulatory legal provisions and remain subject to revision and evaluation according to the same legal procedures.[3] In addition, the legislator requires every employer who uses work processes capable of causing occupational diseases listed in the regulations to declare them to the social security authority.

With regard to the declaration of an occupational disease, it must be submitted to the social security authority within fifteen days, and at the latest within three months, following the initial medical diagnosis of the disease. The authority is required to immediately forward a copy of the declaration to the labor inspectorate. This procedure reflects the fact that the occupational disease places the patient in a health condition that necessitates treatment and the provision of an alternative income to replace his earnings until full recovery or until his condition stabilizes, at which point he becomes entitled to receive a disability pension.

The Third Section: Occupational Accidents

With regard to occupational accidents, these refer to any injury affecting the worker's body as a result of a sudden incident that is not attributable to slowly developing causes related to work, which would otherwise fall within the scope of occupational diseases. For an incident to qualify as an occupational accident, it must occur during the performance of work and be sudden in nature, such as a fall, collision, or explosion. It must also be abnormal, although not necessarily violent, and must arise from an external cause that results in bodily harm. The legislator has defined it as any

1- The source of this definition is Recommendation No. 67 of 1944 issued by the International Labour Conference, which provides: "It is any disease that occurs frequently among workers engaged in a particular occupation, or any poisoning caused by substances used in a specific occupation, which requires compensation as an occupational disease if the person is among those working in that occupation." Ahmed Hassan El-Barai, The General Principles of Social Insurance and Their Applications in Comparative Law, Cairo: Dar Al-Fikr Al-Arabi, 1983, p. 842.

2- Joint Ministerial Decision of 5 May 1996 determining the list of diseases likely to be of occupational origin, Official Journal, No. 16.

3- Joint Ministerial Decision of 9 June 1997 determining the list of works in which workers are highly exposed to occupational risks, Official Journal, No. 75.

accident resulting in bodily injury caused by a sudden, external, and unexpected event occurring within the framework of the employment relationship.[1] What distinguishes this definition is its limitation to the physical aspect, together with the presence of the element of suddenness that differentiates it from an occupational disease, although without clarifying the nature of the sudden cause, which leaves room for interpretation. The cause must be external, even if the incident occurs to the worker outside the workplace[2] while carrying out a task of an exceptional or permanent nature, while exercising an elected mandate, or while regularly pursuing studies. An accident is also considered an occupational accident even if the person concerned is not covered by social insurance when it occurs during sports activities organized by the employing entity, or while performing an altruistic act for the public good or rescuing a person exposed to danger of death. Likewise, an accident is considered an occupational accident if it occurs to the worker during the journey undertaken by the insured person to go to work or to return from it, regardless of the means of transport used.

With respect to occupational accidents, the injured worker or his representative must report the accident to the employer within twenty-four hours following its occurrence. The employer must then report it to the social security authorities within forty-eight hours, and these authorities are in turn required to notify the labour inspectorate. In all cases, the socially insured person may benefit from the corresponding benefits only after obtaining positive approval from the medical control service, which the legislator has designated with regard to occupational accidents and occupational diseases after examining specific conditions.[3]

1- Articles 6 and following of Law No. 83-13, as well as Articles 7 and 8 of the same law, as amended by Ordinance No. 96-19 of 6 July 1996.

2- This was affirmed by the Supreme Court through the following ruling: “It is legally established that any injury or death occurring in the workplace and during working hours is considered to have arisen from work and therefore warrants compensation, unless the contrary is proven. Where it has been established that the appellants’ predecessor died as a result of a heart attack while driving a truck belonging to the municipality in which he was employed, and the National Appeals Committee declared the claim relating to a work accident resulting in death admissible, the trial judges, by rejecting the claim for compensation on the grounds of lack of foundation, violated the law and their decision must therefore be quashed.” Cassation Decision, Social Chamber, 11 July 1995, Case No. 118523, Judicial Review of the Supreme Court, No. 2, 1996, p. 85.

3 - The causal relationship between the documented damages and the occupational accident, particularly if this accident has led or may lead to death or permanent disability; recognition of the injury and compensation for the resulting damage in accordance with the schedules of occupational diseases; the duration of the interruption of work and the date of recovery or healing; the percentage of permanent partial disability in accordance with the scale applicable to occupational accidents and occupational diseases; relapse and deterioration, and the revision of annuities. Article 3 of the Executive Decree determining the conditions of medical control of persons insured under social security, op. cit; Amar Kouhil, “The Specificity of Medical Expertise in Social Security Disputes,”

The Second Requirement: Procedures For Medical Expertise

Most legislations, including Algerian legislation, aim to resolve disputes in which the worker is a party through amicable and expeditious methods without resorting to judicial proceedings. This approach has also been adopted by the legislator in the settlement of medical disputes, as the procedures for their internal resolution were regulated under Law No. 08-08. If these procedures fail, recourse may then be made to the judiciary.

These procedures may be initiated by the insured person or his beneficiaries by contesting the decisions issued by the Social Security Authority. In such cases, they are required to undergo medical expertise as a preliminary procedure, which produces results binding on both parties. Failure to comply with these results leads the parties to resort to the courts. Accordingly, this section will address the method of appointing the medical expert in the first subsection, followed by the performance of the medical expertise and the results arising from it in the second subsection. Finally, the effects resulting from the medical expertise will be examined in the third subsection.

First Section: The Method of Appointing the Medical Expert

The procedures for medical expertise are initiated by submitting a request for expertise by the insured person to the Social Security bodies. This must be done within fifteen days from the date on which the insured person receives notification of the medical decision taken regarding his health condition by the medical advisor of the Social Security Authority. This requirement is stipulated in Article 20, paragraph 1 of Law No. 08-08 and constitutes an essential procedure for initiating medical expertise.

The request must be submitted in writing and accompanied by a report from the treating physician. It must be sent by registered mail with acknowledgment of receipt, or it may be deposited with the services of the Social Security Authority in exchange for a receipt confirming submission. This requirement is provided for in paragraph 2 of the aforementioned article.

The Social Security Authority is obliged to respond to the request for medical expertise submitted by the insured person within eight days from the date of its receipt, as stipulated in paragraph 1 of Article 21, for the purpose of selecting the medical expert.

According to Article 21, paragraphs 1 and 2 of Law No. 08-08, the medical expert is appointed by mutual agreement between the insured person, assisted by his treating physician on the one hand, and the Social Security Authority on the other hand. The expert physician must be selected from the list of medical experts prepared by the ministry responsible for health and the ministry responsible for social solidarity after the mandatory consultation of the Medical Ethics Council. Through this provision, the

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Journal of Comparative Legal Studies, Faculty of Law and Political Science, Djillali Liabes University of Sidi Bel Abbes, 23 September 2018, p. 209.

legislator sought to ensure the selection of a competent physician capable of performing the assigned task with integrity and to prevent the possibility of collusion between expert physicians and insured persons or the occurrence of professional errors.

For the purpose of appointing the expert, the Social Security Authority proposes in writing to the insured person at least three expert physicians drawn from the list provided for in Article 21. Otherwise, the Social Security Authority becomes bound by the opinion of the treating physician. The expert physician must be independent from the parties involved. Accordingly, the expert physician cannot be the treating physician of the insured person, nor a physician affiliated with the insured person's employing institution, nor one of the medical advisors of the Social Security Authority.[1]

In return, the insured person must accept or reject the proposed physicians within a period of eight days. If this period expires without a response, the insured person is deemed to have accepted the expert physician appointed automatically. It should also be noted that if no agreement is reached regarding the appointment of the expert physician in accordance with Article 21 of Law No. 08-08 within thirty days from the date of submission of the request for medical expertise, the Social Security Authority shall immediately appoint an expert physician from the list of medical experts prepared by the Ministry of Health and the ministry responsible for social security, provided that the appointed physician is not among those previously proposed.[2]

Second Section: The Performance of the Medical Expert Examination and Its Resulting Outcomes

Once the medical expert has been appointed, whether through agreement between the parties or by the social security institution on its own initiative, the expert proceeds to perform the assigned task in accordance with the purpose defined for it. The expert summons the insured person in order to conduct the necessary examinations and assessments to verify the injuries suffered and to determine the degree of resulting incapacity, thereby enabling the formation of a professional opinion and the issuance of a consultative report that constitutes the expert decision. For this purpose, the social security institution must place at the disposal of the medical expert, pursuant to Article 25 of Law No. 08-08, a set of references and data relating to the condition of the injured insured person in order to facilitate the expert's task. This file includes the following:

- The opinion of the attending physician
- The opinion of the consulting physician
- A summary of the issues in dispute[3]

1- Abbas Djamel, Settlement of Medical Disputes in Algerian Social Security Legislation, PhD thesis in Social Law, University of Oran, Faculty of Law, 2010–2011, p. 24.

2- Law No. 08-08, op. cit., Art. 24.

3- The aforementioned article added the phrase "summary of the issues in dispute" in comparison with Article 22 of Law No. 83-15 relating to disputes. In the opinion of Professor Smati Tayeb, this is a positive development, since the expert often exceeds the scope of the task assigned to him due to

- The assignment entrusted to the medical expert

Accordingly, the expert must prepare a report that includes all findings, observations, and examinations carried out during the medical expert assessment of the insured person, together with an analysis of the conclusions reached, which must be precise, comprehensive, and unambiguous.

It should be noted that the medical expert must under no circumstances exceed or go beyond the limits of the assigned task. Otherwise, the medical opinion becomes non-binding on the parties concerned.[1] Therefore, in order for the medical expertise to carry conclusive evidentiary value that cannot be rebutted, its results must be complete, precise, and free from any ambiguity.[2] If the expert exceeds the assigned mandate or fails to provide adequate reasoning for the conclusions reached, the expert report becomes subject to challenge before the competent court.[3]

The medical expert begins the task by summoning the insured person and concludes it by preparing the medical expertise report, which must be submitted to the social security institution within fifteen days from the date of receipt of the file referred to in Article 25 above. This requirement is provided for in Article 26 of the aforementioned Law No. 08-08. A copy of the report must also be sent to the insured person, as stipulated in paragraph 2 of the same article.

However, a problem arises from the fact that the legislator did not address the situation in which the medical expert refuses to carry out the medical expertise, whether appointed by agreement or through automatic designation, or where the expert delays or fails to perform the assigned task within the prescribed period of fifteen days. In such circumstances, the legislator should have provided for the possibility of replacing the expert in cases of refusal or delay in performing the expertise.

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his lack of knowledge of the medical issues that are the subject of the dispute. However, the legislator, in the new law, identified this shortcoming and added the aforementioned phrase so that the expert may perform his task in the most complete manner by responding to the points of disagreement without exceeding the limits of his mandate. Tayeb Semmati, Medical and Technical Disputes in the Field of Social Security in Light of the New Law, Dar El Houda, Ain M'lila, Algeria, 2006, p. 33. According to Ibn Bateesh Al-Dhawadi, contrary to the general principles, the Social Security Law did not specify particular conditions that must be met by the appointed medical expert. In his view, defining such conditions is necessary in order to ensure the legal value of the expertise that will be carried out. Bouroussi El-Araj, Criminal Liability of Physicians, Institute of Legal and Administrative Sciences, University Center of Bechar, p. 20.

1- Article 99 of Executive Decree No. 92-296 of 6 July 1992 containing the Code of Medical Ethics, Official Journal, No. 52, 1992.

2- Ibn Batich El-Daouadi, Medical Disputes in the Field of Social Security, Postgraduate Specialized Diploma Thesis in Social Security Management, Second Cohort, Higher School of Social Security in cooperation with the Faculty of Economic Sciences and Management, University of Algiers, 2002–2003, p. 21.

3- Bouroussi El-Araj, op. cit., p. 213.

With regard to the results of the expertise and their significance, the law obliges both the insured person and the social security institution to comply with them, while allowing objections concerning the assessed degree of incapacity contained in the report. Such determinations may be challenged before the disability committee or before the competent judicial authority.

The legislator has expressly required the social security institution, through Article 27 of Law No. 08-08, to notify the insured person of the results of the medical expertise report prepared by the medical expert within ten days following receipt of the report. The decision issued by the social security institution constitutes the administrative expression of the results of the expertise. This decision must indicate either the acceptance or the refusal of the provision of benefits, and it may be subject to challenge by the insured person. Consequently, the expert report must be clear and reasoned in a manner that allows the issuance of a clear decision.

This obligation did not exist under the repealed Law No. 83-15. The objective was to eliminate delays and procrastination in communicating medical expertise reports to the concerned parties. In practice, such reports were often not communicated within the prescribed time limits and were sometimes not communicated at all, which placed a burden on the insured person. By requiring the social security institution to notify the insured person of the results of the expertise within ten days, the legislator sought to put an end to the irregularities that had occurred under the previous law.[1]

Article 28 of Law No. 08-08 also provides for the forfeiture of the insured person's right to a medical expertise if the insured person is duly summoned but refuses to comply without justification. Through this provision, the legislator has filled the gap that existed under Law No. 18-05, which had overlooked this issue. In practice, insured persons often refused to undergo the scheduled medical expertise and subsequently brought actions before the courts on the grounds that they had not been allowed to undergo the medical examination.

Third Section: The Effects Resulting from Medical Expertise

Paragraphs two and three of Article 19 of Law No. 08-08 provide that: "…the results of the medical expertise shall be binding on the parties in a final manner. However, the competent court in social matters may be seized to conduct judicial expertise in the event that it is impossible to carry out a medical expertise concerning the person involved."

It follows from this provision that the results of the medical expertise are definitively binding upon the parties to the dispute, namely the insured person, his

1- Semmati Tayeb, op. cit., p. 101.

beneficiaries, and the social security authority.[1] The legislator has identified only a single circumstance in which recourse to the courts is permitted, namely the impossibility of conducting the medical expertise concerning the person involved, which may occur, for example, in the event of the death of the insured person. Nevertheless, from a principled and constitutional perspective, recourse to the courts should always remain possible in order to challenge the results of medical expertise arising from medical disputes in the field of social security when the integrity of the medical expertise procedures is contested.

The costs of medical expertise include the travel expenses of the insured person for the purpose of undergoing the expertise and the fees of the physician who performs it. The travel expenses of the insured person, his beneficiaries, or, where appropriate, an accompanying person are covered under the conditions determined by regulation when the insured person is summoned by the social security authority to undergo medical expertise outside the municipality of residence, in accordance with Article 36 of Law No. 08-08.

As for the fees due to medical experts when conducting medical expertise, they are borne by the social security authority. However, if the expert physician clearly establishes that the request for medical expertise submitted by the insured patient is unfounded, the insured person is then required to pay the expert's fees. These fees are determined by regulation, as stipulated in Article 28 of the aforementioned law.

It may be observed that this provision resembles the principle governing the allocation of judicial costs to the party that loses the case. It would therefore have been preferable to exclude such costs so that they do not constitute an obstacle for the insured person or discourage him from requesting medical expertise.

Article 19 of the aforementioned law provides that medical disputes are subject to medical expertise, with the exception of those referred to in Article 35 of the same law, which concern appeals before the "Qualified Wilaya Disability Commission." It should be noted that this commission does not have jurisdiction to rule on appeals against decisions resulting from medical expertise, as was the case under the repealed Law No. 83-15.

What, then, is this commission, and how is such an appeal carried out? This is the issue that will be examined in the following second section.

Settlement of Medical Disputes before the Qualified Wilaya Disability Committee

In Law No. 08-08, the legislator classified medical disputes into two distinct categories pursuant to Article 18. The first category concerns medical disputes subject to medical expertise procedures, while the second category concerns medical disputes

1- Draa El-Kandoul Othman, Social Security Disputes and the Role of the Judge in Them, Graduation Thesis for the Higher School of Magistracy Diploma, 14th Cohort, Algiers, 2006, p. 33.

settled directly before the qualified Wilaya Disability Committee and relates to cases of incapacity, whether incapacity resulting from a work accident, an occupational disease, or incapacity resulting from illness within the framework of social insurance, in accordance with Article 31 of the aforementioned law.

Paragraph one of Article 30 of Law No. 08-08 provides that: "A qualified Wilaya Disability Committee shall be established, the majority of whose members are physicians." This committee is entrusted with examining objections to decisions issued by social security bodies referred to in Article 31 of this law and relating to cases of incapacity resulting from illness, occupational disease, or a work accident.

What is the composition of this committee? How does it operate? What procedures are followed to submit disputes before it? These questions will be addressed by examining the composition and functioning of the Disability Committee in the first subsection and the procedures for submitting disputes to this committee in the second subsection.

The First Requirement: Composition And Functioning of The Qualified Wilaya Disability Committee

This subsection examines the composition of the Wilaya Disability Committee as determined by law through regulatory provisions in the first part, and its functioning in the second part.

First Section: Composition of the Wilaya Disability Committee

According to paragraph two of Article 30 cited above: "The composition, organization, and functioning of this committee shall be determined by regulation." This regulation is embodied in Executive Decree No. 09-73.[1]

Pursuant to Article 2 of this decree, the "qualified Wilaya Disability Committee" is composed of:

- A representative of the Wali, serving as chairperson
- Two expert physicians proposed by the Wilaya Director of Health and Population after consultation with the Regional Council of Medical Ethics
- Two consulting physicians, the first belonging to the National Social Insurance Fund for Salaried Workers and the second belonging to the National Social Security Fund for Non-Salaried Workers, proposed by the directors general of these two bodies
- One representative of salaried workers proposed by the most representative workers' trade union organization at the level of the Wilaya
- One representative of non-salaried workers proposed by the most representative employers' trade union organization at the level of the Wilaya

1- Executive Decree No. 09-73 of 27 February 2009 determining the composition, organization, and functioning of the Wilaya Disability Committee competent in matters of social security.

The qualified Wilaya Disability Committee may also invite any specialist whose expertise may assist it in its work. The secretariat of the committee is ensured by the Wilaya agency of the National Social Insurance Fund for Salaried Workers, in accordance with Article 7 of the executive decree.

Since the assessment of incapacity constitutes a technical matter, the composition of the committee includes two expert physicians. These physicians must meet the same conditions previously mentioned for the expert physician responsible for conducting medical expertise. Accordingly, they must not be among the consulting physicians of the social security body, nor the treating physician of the insured person, nor a physician employed by the institution where the insured person works.

It is also apparent from this provision that the composition includes an equal number of expert physicians and consulting physicians of the social security bodies, numbering two each. Similarly, the representation of insured persons is equal, with one representative each for salaried and non-salaried workers. In addition, the social security body itself is not represented directly, even though consulting physicians are included, unlike the situation under Law No. 83-15(Articles 32 and 85) where representation existed through the authority supervising the body. The chairperson of the committee is a neutral member represented by the delegate of the Wali.

From this composition, it can be inferred that the legislator sought to give greater consideration to the interests of the insured person in comparison with those of the social security body.

Members of the qualified Wilaya Disability Committee are appointed by decision of the minister responsible for social security for a term of three years, renewable. In the event that the membership of one of the members ceases, a replacement is appointed according to the same procedures for the remainder of the term, in accordance with Article 3 of Executive Decree No. 09-73.

It should also be noted that members of the qualified Wilaya Disability Committee may not be appointed to other committees responsible for disputes in the field of social security, as provided for in Article 12 of the same Executive Decree No. 09-73.

Second Section: Conduct of the Proceedings of the Wilaya Appeals Committee

The committee competent in disability cases, composed of six members, meets to deliberate and examine the objections submitted before it during an ordinary session held at the headquarters of the wilaya agency of the National Fund for Salaried Workers. It convenes once a month upon invitation from its chairperson, in accordance with Article 4 of Executive Decree No. 09-73.

Paragraph 3 of Article 4 of the aforementioned Executive Decree provides that: “The meetings of the qualified wilaya disability committee are valid when attended by a majority of its members. In the absence of a quorum, its meetings shall be valid after

a second summons regardless of the number of members present, within a period not exceeding fifteen (15) days."

The committee adopts its decisions by a simple majority of the votes of the members present. In the event of a tie, the chairperson has the casting vote(Article 5 of Executive Decree No. 09-73).

The committee issues its decisions, which must be reasoned on the basis of the opinion of the expert physician. It may also appoint a specialist physician to examine the claimant, order additional medical examinations, or conduct any investigation it deems useful. These decisions are recorded in minutes signed by the chairperson of the committee and entered into a special register that is numbered and certified by the chairperson(Art. 5/2).

The qualified wilaya disability committee must also transmit a copy of these decisions to the director of the wilaya agency of the Social Security Authority concerned by registered letter with acknowledgment of receipt within twenty (20) days from the date of the committee's decision, as stipulated in Article 6, paragraph 2 of the aforementioned decree.

The wilaya agency of the National Social Insurance Fund for Salaried Workers serves as the secretariat of the wilaya disability committee. This fund provides the committee with a headquarters as well as the necessary resources to ensure its proper functioning(Art. 8).

Members of the wilaya disability committee receive an attendance allowance fixed at two thousand (2000) Algerian dinars for each session or meeting. The remuneration of the expert physicians consulted by the committee is set at one thousand five hundred (1500) Algerian dinars for each expert assessment. The National Social Insurance Fund for Salaried Workers and the National Social Security Fund for Non-Salaried Workers assume responsibility for the expenses, remuneration, and operational costs of the secretariat of the wilaya disability committee according to the files handled(Arts. 9, 10, 11).

Members of the wilaya disability committee may not be appointed to other committees responsible for disputes in the field of social security. Accordingly, membership in the wilaya disability committee cannot be combined with membership in the wilaya preliminary appeals committee concerned with general disputes or in the technical committee of a medical nature responsible for technical disputes(Art. 12).

The qualified wilaya appeals committee prepares and adopts its internal regulations, which determine the rules governing its organization and functioning(Art. 14). Members of the qualified wilaya appeals committee are bound by professional secrecy(Art. 13). The chairperson of the wilaya appeals committee is also required to submit an annual report on the activities of the committee to the minister responsible for social security(Art. 15).

The Second Requirement: Procedures For Submitting the Dispute to The Qualified Wilaya Disability Committee

Pursuant to Article 19 of Law No. 08-08, which provides that the disputes referred to in Article 17 above are subject to medical expertise, except for those provided for in Article 31 of the same law, the legislator has entrusted the Disability Committee with the direct adjudication of disputes relating to disability without recourse to medical expertise procedures. This approach aims to save time, given that a person suffering from disability requires urgent care through the granting of the compensation to which they are entitled as a result of their disability.

Accordingly, this section addresses the powers of the Wilaya Disability Committee in the first subsection and the procedures for appeal in the second subsection.

First Section: Powers of the Qualified Wilaya Disability Committee

The committee that is specifically competent in matters of disability is responsible for examining disputes and objections to decisions issued by social security institutions concerning cases of disability resulting from occupational diseases or workplace accidents. The committee is tasked with assessing the following:[1]

- Permanent disability, whether total or partial, resulting from a workplace accident or occupational disease that gives rise to the granting of a pension
- The recognition of disability, as well as the determination and review of the degree of disability within the framework of social insurance

The legislator has entrusted the Disability Committee with the direct resolution of disputes relating to disability without resorting to medical expertise procedures in order to save time. A person suffering from disability urgently requires support through the granting of the compensation due as a consequence of the disability. Furthermore, a specialized and qualified committee examines the file within two months from the date of receipt of the appeal, in accordance with Article 31 paragraph 4 of the same law.

As previously noted, the results of medical expertise are binding on both the injured person and the social security institution, except with regard to the percentage of disability determined by the expertise. This percentage may be contested by the concerned parties before the Wilaya Disability Committee, which serves as a body for deciding appeals against decisions issued by social security institutions concerning disability resulting from occupational disease or workplace accidents. These decisions are taken on the basis of the results of medical expertise, and the committee therefore acts as an appellate body within the framework of the internal settlement of medical disputes.

1- Article 31 of Law No. 08-08, op. cit.

The committee is also responsible for determining the percentage and nature of the disease or injuries, the date of recovery or consolidation, or the state of consolidation of the disability and its degree. Objections relating to disability must therefore be submitted to the Disability Committee for determination before recourse to the courts, since internal appeal or internal settlement constitutes the primary mechanism in social security disputes in general and in medical disputes in particular. This is due to the need for prompt resolution given that such disputes relate to the health condition of the insured person.[1]

Prior to the amendment of Article 37 of Law No. 83-15, the decisions of Disability Committees were final and could only be challenged through cassation before the Supreme Court on the basis that the technical opinion provided by the expert was binding. However, following the amendment introduced by Law No. 99-10[2] in Article 14, the decisions of Wilaya Disability Committees became subject to appeal before the competent judicial authorities. This principle was reaffirmed by the legislator in Article 35 of Law No. 08-08.

In reality, the Wilaya Disability Committee functions as a second level of expertise and review of the opinions of the attending physician and the consulting physician of the social security institution, as well as the assessment contained in the medical expertise report prepared by the medical expert concerning disability.

Furthermore, pursuant to Article 30 of Law No. 08-08, a Disability Committee exists within each social security fund at the level of every wilaya, which in practice had already been the case prior to this amendment. Consequently, the jurisdiction of the Disability Committee cannot extend beyond this scope, otherwise it would encroach upon the jurisdiction of another fund that enjoys administrative autonomy and a defined territorial competence. Therefore, if an insured person in the Wilaya of Algiers wishes to submit an appeal to the Disability Committee, the appeal must be addressed to the fund to which the person belongs, namely the National Social Insurance and Workplace Accidents Fund, Algiers Agency. The latter then forwards the appeal to one of its agents, who serves as the secretary of the committee.

Second Section: Appeal Procedures

An appeal before the Wilaya Disability Commission is initiated by the patient or injured person (the insured) within a period of thirty (30) days beginning from the date of receipt of the decision of the social security authority. The commission is notified through a written request accompanied by the report of the treating physician,

1- Badis Kachida, Covered Risks and Dispute Resolution Mechanisms in the Field of Social Security, Master's thesis in Legal Sciences, Business Law specialization, University of Hadj Lakhdar, Batna, 2009–2010, p. 91.

2- Law No. 99-10 of 11 November 1999 amending and supplementing Law No. 83-15 relating to disputes in the field of social security.

submitted either by registered letter with acknowledgment of receipt or by depositing it with the secretariat of the commission in exchange for a receipt of deposit. This is provided for in Article 33 of Law No. 08-08.

It follows from this provision that compliance with the appeal deadline constitutes an essential procedural requirement of public order. Failure to observe it results in the formal inadmissibility of the insured person's request before this commission due to the expiration of the legally prescribed time limits.

Once the appeals reach the commission's secretariat, they are recorded and the appellant's claims and positions are identified on the basis of the submitted documents, particularly the decision of the social security authority that is the subject of the appeal. The members of the qualified Wilaya Disability Commission are then summoned to convene. Article 32 of Law No. 08-08 provides that the commission may take all necessary measures, including in particular appointing a medical expert, examining the patient, and requesting additional medical examinations. It may also undertake any investigation it considers necessary.

The Wilaya Disability Commission rules on the appeals submitted to it against the medical aspects of decisions issued by social security authorities within sixty (60) days from the date of receipt of the appeal or petition submitted through one of the two legally prescribed methods(Article 31/2 of Law No. 08-08).

After the decision is issued, it is communicated to the insured person. Under Article 34 of the same law and paragraph one of Article 6 of Executive Decree No. 09-73, the commission's secretariat notifies its decisions by registered letter with acknowledgment of receipt or through an accredited social security inspection officer by means of a record of receipt within twenty (20) days from the date of issuance of the decisions. The commission must also send a copy of these decisions to the director of the concerned Wilaya agency of the social security authority within the same time limit, in accordance with paragraph two of Article 6 of the same executive decree(Art.34), in order to enable them to challenge the decision before the competent judicial authorities. However, Article 35 of Law No. 08-08 does not clarify which judicial body has jurisdiction to examine appeals against decisions of the qualified Wilaya Disability Commission. It remains unclear whether jurisdiction lies with the courts adjudicating social matters, whose judgments are subject to all legally established avenues of appeal, or with the courts sitting at the seat of the judicial councils that are competent to rule on cases related to disability retirement pensions and disputes relating to occupational accidents. This issue will be addressed in the context of the judicial settlement of medical disputes.

As for the costs of appeals before the qualified Wilaya Disability Commission, they are subject to the same rules governing the costs of medical expertise, particularly with regard to the travel expenses of the insured person, his beneficiaries, or an accompanying person where necessary, as stipulated in Article 36 of Law No. 08-08.

With regard to the expenses resulting from the procedures carried out by the qualified Wilaya Disability Commission, these are provided for in Article 37 of the same law. This provision differs from the system previously applied under the repealed Law No. 83-15, whose Article 39 stipulated that the costs of appeal procedures before the Disability Commission were borne by the social security authorities regardless of the party in whose favor the decision was rendered.

Conclusion

Although the legislator's intention within the framework of internal settlement was to simplify procedures and reduce the time limits allowing for the rapid processing of cases, this system is not without certain shortcomings that require further study and attention in order to identify appropriate solutions. These shortcomings may be summarized as follows:

- One of the issues that requires discussion in Law No. 08-08 relating to social security disputes is that the binding nature of the results of medical expertise for the parties to the dispute is absolute and does not allow judicial challenge, even where the integrity of its procedures is compromised, where it lacks precision or completeness, where ambiguity affects its conclusions, or where there is a need to renew or supplement it, or even when the decision of the social security body does not conform to the expert report. The only circumstance that the legislator has recognized as justifying judicial challenge is the impossibility of conducting the expertise. This situation is inconsistent with sound legal reasoning and requires that this law incorporate additional grounds for judicial challenge in order to guarantee and safeguard the rights of the socially insured person.
- It is necessary to explicitly determine the judicial bodies competent to adjudicate decisions issued by the disability committees, taking into consideration that allowing appeals against these decisions before trial judges may undermine one of the fundamental elements of the internal settlement system, namely the rapid resolution of disputes.
- It is necessary either to grant a reasonable and sufficient time limit to the social security body to contact the insured person for the purpose of conducting the medical expertise, since the eight-day period is insufficient to summon the insured person, particularly when he resides in distant locations. In practice, the insured person frequently objects on the ground that he was not summoned and requests that the opinion of the treating physician be applied. Alternatively, medical expertise procedures should be initiated on the same date on which the request for expertise is submitted in order to avoid the issuance of judicial decisions obliging the social security fund to adopt the opinion expressed by the treating physician.
- The list of occupational diseases should be reviewed due to the emergence of new occupational diseases that are not included in the existing list, which has

not been revised for a long time. It would therefore be advisable to update it in order to ensure full protection for insured persons against such risks.

- The legislator should keep pace with the development of Algerian society and should not remain bound by social security laws enacted in the nineteen eighties.
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