

## **May a judge decide contrary to an expert opinion?**

**In civil litigation, it is common that the assessment of an important fact requires special expertise that the judge does not possess. In such cases, the court appoints an expert. This raises the question: may a judge depart from the expert's opinion if other evidence—such as witness testimony—suggests otherwise?**

Section 279 (1) of the Hungarian Code of Civil Procedure provides that the court shall freely assess the evidence, and no item of evidence has predetermined probative value. However, this does not mean that a judge may disregard an expert opinion at any time.

A decision of the Curia of Hungary, published as BH 2025.168, clarified this issue in the context of an inheritance dispute.

### **The case in brief**

The claimant—one of the deceased's children—argued that the signature on the will did not originate from the testator and therefore requested a declaration of the will's total invalidity. In the alternative, the claimant sought a declaration that at least the disinheritance clause was invalid, arguing that its statutory conditions were clearly not met, since the claimant had had an expressly good relationship with the testator prior to the testator's death.

In the proceedings, the court-appointed expert categorically concluded that the signature was forged. By contrast, the testamentary witnesses testified that the testator had signed the document in their presence.

### **Court decisions**

The court of first instance found the expert opinion to be free from doubt and held that the witnesses' testimony – containing subjective elements – could not rebut the expert findings. Consequently, it declared the will invalid in its entirety.

Following the defendant's appeal, the court of second instance took the view that although the expert opinion was indeed free from doubt, evidence has no "fixed probative value." It considered the witnesses' testimony and the presumed intent of the testator to be stronger evidence. Accordingly, it declared only the disinheritance clause invalid, while rejecting the claim of formal invalidity of the will as a whole.

The claimant filed a petition for review against the final judgment. In the review proceedings, the Curia set aside the final judgment and upheld the decision of the court of first instance. Its key findings were as follows.

### **Key findings of the Curia**

A violation of the statutory rules on the assessment of evidence may serve as grounds for review only in exceptional cases, as weighing evidence indeed falls within judicial discretion. Such discretion

violates the law only if the assessment is not carried out within the framework set out in Section 279 of the Code of Civil Procedure—namely, if it is not based on the joint evaluation of all evidence—or if it is manifestly illogical, that is, clearly contrary to the rules of rational assessment, because the evidence in the case leads to only one possible conclusion, which nevertheless contradicts the court’s decision.

In several earlier decisions, the Curia had already pointed out that examining the authenticity of handwriting and signatures is a matter of expert knowledge. Under the relevant procedural rules, an expert opinion on a technical issue may be rebutted only by further expert evidence. The court may assess only whether the opinion complies with the rules of logic and how it fits with the other data of the case. In the present case, both courts found the expert opinion to be free from doubt; therefore, no further expert evidence was required regarding the technical issue examined.

The fact that the testamentary witnesses, even upon repeated examination, testified that the testator had signed the will in their presence could not alter the legal assessment of the will, given the categorical and unchallenged expert opinion. Witness testimony may justify departure from an expert opinion only if the expert has provided merely a so-called “probabilistic” opinion, or if doubts concerning the expert opinion could not be resolved even after repeated supplementation or the appointment of a new expert. No such situation existed in the present case.

## **Conclusion**

The Curia’s decision provides clear guidance.

A judge may not decide contrary to a categorical and unchallenged expert opinion; the principle of free assessment of evidence does not extend to overruling expert findings on technical matters. However, if an expert opinion is expressed only in probabilistic terms, or if doubts concerning the opinion remain unresolved even after repeated clarification or the appointment of a new expert, the court may depart from the expert’s conclusions.

This guidance applies to all civil proceedings, not only inheritance cases. Expert opinions therefore play a particularly prominent role whenever the decision depends on issues requiring specialized expertise.