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No obligation to follow the findings of experts but a reminder of the obligation to give reasons for court decisions

[Cass. Civ 1e, 14 December 2022, appeal no. 21-22.037, judgment published](#)

Under the terms of its recent judgment of 14 December 2022, the Court of Cassation recalls that if the trial judges are not bound by the findings of the experts, they can only depart from them on the sole condition of justifying their decision precisely, in fact and in law.

In this case, following a hip replacement procedure, a patient had suffered several dislocations requiring reoperations involving the fitting of an anti-dislocation device and a change of prosthesis.

The patient therefore sued for liability and compensation:

- on the basis of liability for defective products: the manufacturer of the prosthesis, who implicated the manufacturer of the femoral head,
- on the basis of professional civil liability: the surgeon, who had acted as a liberal professional and as a public official.

Two expert reports – one judicial, the other administrative – concluded:

- that the patient's state of health had necessitated the fitting of a prosthesis;
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- that this prosthesis had been fitted by the surgeon in accordance with the rules of the art, no fault, error, clumsiness or negligence of the surgeon being noted;
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- that the prosthesis placed did not reveal any defect.

The Court of Appeal of Pau had thus, in its judgment of 1 June 2021, rejected the liability of the manufacturer of the prosthesis.

It did not, on the other hand, follow the findings of the expert reports with regard to the surgeon and held the latter liable.

To justify its decision, the Court of Appeal noted that the surgeon should have drawn "*the consequences of the morphological characteristics of their patient (overweight and propensity to physical activity) which required the implantation of an anti-dislocation device; [that] the rapid occurrence of one dislocation, followed by four others, all reduced under general anesthesia in the months following the first operation, led to the decision to reoperate to implant a device, are proof of this initial poor assessment*", "*this device had proved effective since the dislocations [had] not recurred*".

The Court of Cassation obviously does not sanction the Court of Appeal for not having followed the findings of the expert reports.

On the other hand, it censures it, on the basis of Article L. 1142-1 of the Public Health Code – according to which the liability of health professionals for acts of care is engaged only in the event of fault – for not having specified on which medical elements it relied to reach this conclusion contrary to those of the judicial and administrative expertise carried out.

The obligation to give reasons for court decisions is an essential rule of civil proceedings, reviewed by the Court of Cassation.