

Two recent rulings on private and court-appointed expert opinions in France

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Private expert opinions and their probative value (Cass. 3e civ., 30 January 2025, no. 23-15.414)

French case law has recently undergone significant developments with regard to the treatment of consensual (private) expert opinions.

Previously, courts only recognised such expert reports if they were supported by objective evidence. A court could not rely solely on a private expert opinion submitted by one party (Cass. ch. mixte, 28 September 2012, No. 11-18.710).

In a recent ruling dated 30 January 2025 (Cass. 3e civ., No. 23-15.414), the French Supreme Court (Cour de Cassation) has now made a significant opening: two consistent private expert opinions may be sufficient to convince a court of the merits of a claim – even without further independent evidence.

However, this does not mean complete equivalence with court-appointed expert opinions. The assessment of evidence remains with the court, and even several private expert opinions do not constitute a compelling basis. Nevertheless, the decision opens up new possibilities for the parties to substantiate their arguments more efficiently and without court evidence – a relevant aspect, especially in complex commercial law proceedings, where time and costs play a central role.

Liability of court-appointed experts (Cass. civ. 1ère, 19 March 2025, No. 23-17.696)

In a noticeable ruling on 19 March 2025, the French supreme Court significantly tightened the requirements for court-appointed experts opinions. According to the ruling, an expert is liable under civil law if their report is based on insufficient or hypothetical grounds and the party concerned suffers demonstrable damage as a result – for example, in the form of losing a lawsuit.

The judges emphasised that experts are obliged to conduct thorough investigations, particularly when investigating the causes of technical defects. Failure to do so may be considered a breach of the duty of care under Article 1240 French civil code (Code civil).

The Court also clarified that no additional independent evidence is required to assess the errors in an expert opinion – the courts can assess this independently. Also noteworthy is the application of the concept of damage as ‘loss of opportunity’, which makes it easier for plaintiffs to assert a causal link between the deficiency in the expert opinion and the outcome of the proceedings.

This ruling is likely to have far-reaching consequences in terms of application – not only for experts, but also for lawyers, who should critically examine expert opinions in the future and specifically consider liability claims in the event of serious errors.

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