

國家賠償中關於自殺阻卻因果關係 之舉證責任

— 評臺灣高等法院 102 年度上國字 第 12 號民事判決

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目 次

- 壹、基本案情
- 貳、二審（系爭判決）之判斷（摘要）
- 參、爭點所在
- 肆、判決評析
- 伍、結論

關鍵詞：證據評價 自由心證 鑑定意見 經驗法則 國家賠償。

Keywords：Valuation of Evidence, Free Discretion, Expert Opinions, Principle of Experience, State Compensation.

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摘 要

民事訴訟中之事實認定，固係由法官依民事訴訟法第 222 條第 1 項規定以自由心證認定之。但對於舉證責任法則之運用，若在審理程序及判決書中若能適當揭示，應較能系爭事件之程序具有透明性及避免突襲。而對於事實之認定亦應符合經驗法則，對於鑑定人之鑑定意見與證人證詞之採信與否，固為法院自由心證之適用之核心領域。但就其取捨仍應符合經驗法則，以避免恣意及突襲。對於部分事實爭點若有未明，舉證程度未達判決成熟度時，依其情形，即可能有再行調查之必要。

The burden of proof for Suicidal Causation in State Compensation- Comments on Taiwanese Appellant Court Case No. 102-Civ.-12

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Abstract

A fact's determination in a civil action, although determined by the judge in accordance with the Article No. 222(1) of the Civil Procedure, allows discretion of evidence found. However, if the burden of proof rules are applied and properly revealed in both of the proceedings and judgments, the procedural disputes shall be more transparent without rebuke. In addition, a fact's determination shall be consistent with the principle of experience. Since the adoption of expert opinions and witness's testimony falls into the solid core area of the court exercising free discretion, it is supposed to comply with the principle of experience to avoid arbitrariness and rebutting evidence. Any arguments to the partial fact are not clear enough for the degree of proof burden for the court to make decisions, according to their circumstances, which may require further investigation necessary.